TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1941

No. 49

MORTON SALT COMPANY, PETITIONER,

vs.

THE G. S. SUPPIGER COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED APRIL 12, 1941.

CERTIORARI GRANTED MAY 26, 1941.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1940.

No.

MORTON SALT COMPANY, A CORPORATION OF ILLINOIS,
Petitioner,

vs.

THE G. S. SUPPIGER COMPANY, A CORPORATION OF DELAWARE,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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TRANSCRIPT OF RECORD

IN THE

United States Circuit Court of Appeals
For the Seventh Circuit

No. 7356

THE G. S. SUPPIGER COMPANY, A CORPORATION OF DELAWARE,

Plaintiff-Appellant,

vs.

MORTON SALT COMPANY, A CORPORATION OF ILLINOIS,

Defendant-Appellee.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

TRANSCRIPT OF RECORD FILED JUNE 5, 1940.
PRINTED RECORD.

IN THE

United States Circuit Court of Appeals
For the Seventh Circuit

No. 7356

THE G. S. SUPPIGER COMPANY, A CORPORATION OF DELAWARE,

Plaintiff-Appellant,

vs.

MORTON SALT COMPANY, A CORPORATION OF ILLINOIS,

Defendant-Appellee.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

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1 Pleas in the District Court of the United States for the Northern District of Illinois, Eastern Division, begun and held at the United States Court Room, in the City of Chicago, in said District and Division, before the Honorable William H. Holly, District Judge of the United States for the Northern District of Illinois on 23rd day of February, in the year of our Lord one thousand nine hundred and forty, being one of the days of the regular February Term of said Court, begun Monday, the Fifth day of February, and of our Independence the 164th year. Placita.

Present:

Honorable William H. Holly, District Judge.
William H. McDonnell, U. S. Marshal.
Hoyt King, Clerk.

2 IN THE DISTRICT COURT OF THE UNITED STATES,

Northern District of Illinois,

Eastern Division.

The G. S. Suppiger Company, a corporation of Delaware, *Plaintiff*,
vs.
Morton Salt Company, a corporation of Illinois, *Defendant*.
} No. 245.

Be It Remembered, that the above-entitled action was commenced by the filing of the following Complaint in the above-entitled cause, in the office of the Clerk of the District Court of the United States for the Northern District of Illinois, Eastern Division, on this the 30th day of December, 1938.

Filed Dec. 30, 1938.

3 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—245) * *

COMPLAINT.

1. This action arises under the Act of March 3, 1911, Sec. 24, R. Stat. 629; U. S. C., Title 28, § 41: specifically under the Act of March 3, 1911, Sec. 48, R. Stat. 231; U. S. C., Title 28, § 109, as hereinafter more fully appears.

2. On November 10, 1936, United States Letters Patent No. 2,060,645 were duly and legally issued to the Scientific Tablet Co., a corporation of Illinois, for an invention in Tablet Depositing Machines; on or about June 30, 1938, the entire right, title and interest in and to said United States Letters Patent No. 2,060,645, and to all the rights accrued because of past infringement thereof, were duly assigned to the plaintiff; and, since such assignment date, the plaintiff has been and still is the owner of those Letters Patent, a copy of which is attached.

3. Defendant has for a long time past been and still is infringing those Letters Patent by making and using tablet depositing machines embodying the patented invention, and will continue to do so unless enjoined by this court.

4 4. Plaintiff has given written notice to the defendant of its said infringement and has otherwise called to the notice of the defendant its aforesaid infringement.

Wherefore plaintiff demands a preliminary and final injunction against further infringement by defendant and those controlled by defendant, an accounting for profits and damages, and an assessment of costs against defendant.

The G. S. Suppiger Company,
By G. S. Suppiger,
President.

Robert H. Wendt,
2300 Board of Trade Building,

Williams, Bradbury, McCaleb & Hinkle,
Solicitors for Plaintiff,
2300 Board of Trade Building,
Chicago, Illinois.

Lawrence C. Kingsland,
Estill E. Ezell,
Edmund C. Rogers,
705 Olive Street,
St. Louis, Missouri,
Of Counsel.

5-11 United States Patent Number 2,060,645 was attached to Complaint. (See Index.)

12 And on, to wit, the 15th day of April, 1939 came the Defendant by its attorneys and filed in the Clerk's office of said Court its certain Answer in words and figures following, to wit:

Filed Apr. 15, 1939. 13 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—245) * *

DEFENDANT'S ANSWER TO COMPLAINT.

1. Defendant admits the jurisdiction of the Court as alleged in paragraph 1 of Complaint.

2. Answering paragraph 2 of the Complaint, defendant admits the issue on November 10, 1936, the Letters Patent No. 2,060,645 to Gerhart S. Suppiger and Clyde Alexander, Belleville, Illinois, and John H. Schreiber, St. Louis, Missouri, assignors to Scientific Tablet Company, Belleville, Illinois, a corporation of Illinois, for Tablet Depositing Machine; but as to the other allegations in said paragraph, defendant is without sufficient knowledge to form a belief, and therefore denies the same.

3. Defendant denies the allegations stated in paragraph 3 of the Complaint.

4. Answering paragraph 4 of the Complaint, defendant admits receiving written notice charging it with infringement of said patent.

14 5. Defendant, further answering the Complaint, avers and charges the fact to be that the said Letters Patent No. 2,060,645, and each and every part thereof, and each and every claim thereof, are void and are of no effect in law, because the alleged invention therein described, disclosed and claimed, had been, long prior to the alleged invention or discovery thereof by the said Gerhart S. Suppiger, Clyde Alexander and John H. Schreiber, and more than two years prior to their application, described and fully disclosed to the public and patented in various patents and described in various printed publications in the United States and foreign countries; that said Gerhart S. Suppiger, Clyde Alexander and John H. Schreiber were not the true, original, joint or first inventors or discoverers thereof, or of any material or substantial part of the alleged invention claimed to be patented, but that the same had been in public use in the United States for more than two years prior to the date of filing the application on which said patent issued, and each and every part thereof had been invented and discovered and used by, and been known to others in the United States before the alleged invention or

discovery thereof by said Gerhart S. Suppiger, Clyde Alexander and John H. Schreiber, and said alleged invention and improvements had been abandoned to the public.

6. The following patents, names of parties mentioned in the said patents, with the addresses there given, are among those supporting these defenses and to which defendant makes reference:

15 United States Letters Patent.

(a) Cited in Course of Prosecution of Application on Which Patent No. 2,060,645 Issued.

Number	Date	Inventor
538,915	May 7, 1895,	C. H. Hopwood.
596,756	January 4, 1898,	O. H. Marston.
658,450	September 25, 1900,	H. C. Kettler.
771,778	October 4, 1904,	L. P. Graham.
859,772	July 9, 1907,	R. Hoyt.
1,186,632	June 13, 1916,	L. E. Waterman.
1,209,192	December 19, 1916,	G. P. Miller.
1,293,092	February 4, 1919,	J. M. Hartman.
1,469,614	October 2, 1923,	H. O. Benton.
1,849,238	March 15, 1932,	F. O. Lindgren,
1,884,365	October 25, 1932,	G. S. Suppiger, et al.
1,909,050	May 1, 1933,	J. L. Ferguson.
1,912,243	May 30, 1933,	F. H. Bateman, et al.

(b) Not cited in the Course of Prosecution of said Application:

203,313	May 7, 1878,	V. Barker.
214,426	April 15, 1879,	M. E. B. Miller.
289,941	December 11, 1883,	J. H. Swift.
377,413	February 7, 1888,	R. T. Smith.
432,477	July 15, 1890,	J. Casey.
461,013	October 13, 1891,	W. S. Doig.
485,530	November 1, 1892,	J. A. Cain.
534,796	February 26, 1895,	T. R. Houseman.
586,711	July 20, 1897,	H. W. Morgan.
797,082	August 15, 1905,	W. H. Stout.
1,007,234	October 31, 1911,	G. D. Parker.
1,104,658	July 21, 1914,	J. P. Goodfellow.
1,243,407	October 16, 1917,	L. A. Hawthorne.

Number	Date	Inventor
1,299,820	April 8, 1919,	A. A. Carper.
1,315,645	September 9, 1919,	S. J. Stappler.
1,335,563	March 30, 1920,	J. Doig.
1,355,488	October 12, 1920,	G. E. McKenney.
1,387,461	August 16, 1921,	C. H. Birch.
1,395,727	November 1, 1921,	C. W. Odermatt.
1,751,384	March 18, 1930,	H. D. Ayars.
1,945,337	January 30, 1934,	G. S. Suppiger, et al.

and others, of which defendant is not at present advised, but begs leave to add hereto by a proper amendment to this its Answer, together with details thereof when such information is obtained.

7. Defendant, further answering the Complaint, denies that said alleged invention is or was the lawful subject of letters patent; alleges that the same was not the result of the exercise of any inventive faculty and involves nothing more than mechanical skill over the prior existing art; and that it comprises a mere aggregation of well known old elements and, therefore, said patent and every part and claim thereof are invalid.

8. Defendant, further answering the Complaint, says that said Letters Patent No. 2,060,645 are invalid because the specification and claims thereof do not describe the alleged invention in full, clear, concise and exact terms such as would enable a person skilled in the art to practice the same, and do not particularly and distinctly claim that which is alleged to be an improvement. And such claims are ambiguous and indistinct and do not point out with that sufficiency required by the statute to inform the public as to the limits of the alleged invention purported to be covered by the patent.

17 9. Defendant, further answering the Complaint, asserts that the state of the art before and at the time of the alleged invention and/or application for letters patent therefor was such that to be valid, the claims of the said patent must be so narrowly construed as to be incapable of being validly applied to defendant's tablet dispensing machine, identified as Morton Salt Tablet Dispenser Model E-1, Serial No. 117, in paragraphs 1 and 2 of plaintiff's Bill of Particulars.

10. Defendant's further answering the Complaint, alleges that it has not manufactured or used, or caused to be manufactured or used, or threatened to have manufac-

tured and used any machine in accordance with and embodying the alleged invention disclosed in said Letters Patent No. 2,060,645; avers that it has not infringed said patent or violated any rights or claims of plaintiff thereunder; and that its action in the matters herein complained of did not cause the plaintiff any damage or injury.

11. Defendant, further answering the Complaint, denies each and every allegation contained therein not specifically denied or admitted hereinbefore.

Whereupon, this defendant having fully answered the Complaint in so far as it is advised the same is material and necessary to be answered thereto, denies that the plaintiff is entitled to the relief or any part in said Complaint demanded, or any relief whatsoever, and prays to be hence dismissed with its reasonable charges in this behalf most wrongfully sustained.

Morton Salt Company,
By Clarence E. Mehlhope,
Its Attorney.
38 South Dearborn Street,
Chicago, Illinois.

Dated: April 15, 1939.
Offield, Mehlhope, Scott & Poole,
Clarence F. Poole,
Solicitors and of Counsel,
38 South Dearborn Street,
Chicago, Illinois.

18 And on, to wit, the 26th day of July, 1939, came the Defendant by its attorneys and filed in the Clerk's office of said Court its certain Motion and Amendment to Answer in words and figures following, to wit:

Filed July 26, 1939. 19 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—245) * *

MOTION.

Now comes Morton Salt Company, the defendant by its solicitor, and moves the Court for leave to amend its Answer to the Complaint in the above entitled cause as set forth in the attached Amendment to Answer.

Clarence E. Mehlhope,
38 S. Dearborn St.,
Chicago, Ill.,
Solicitor for Defendant.

Dated: Chicago, Ill., July 26, 1939.

Offield, Mehlhope, Scott & Poole,
Solicitor and of Counsel for Defendant.

20 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—245) * *

AMENDMENT TO ANSWER.

Now comes Morton Salt Company, the defendant, by its solicitor, and leave of court having been first had and obtained, amends its answer as follows:

After paragraph 4 insert the following paragraph:

"4a. Defendant further charges that plaintiff and its predecessor in title are endeavoring and have endeavored to employ the patent in suit, contrary to law, to establish and maintain for itself a monopoly in that part of the trade in salt, and in particular salt tablets containing pre-determined amounts of salt (which themselves are unpatented products) when used in the canning industry for the salting or the seasoning of canned goods, and that this field of use is a large part of the commercial field of the use of salt. And defendant further charges that plaintiff leases its patented machines, made under the patent in suit, to those engaged in the said canning industry, for the depositing of salt tablets in the process of canning vegetables or the like, under a contract or agreement by each lessee that the use of said tablet-depositing machine be limited entirely and exclusively to use

with salt tablets obtained from the plaintiff. And defendane further charges that this suit is brought as a part
21 of a plan or scheme to create such an unlawful monopoly in the sale of salt tablets and to prevent canners who have leased said salt tablet-depositing machines from the plaintiff from buying salt tablets from others, and in particular from this defendant; and to prevent those engaged in the canning industry, who have not acquired plaintiff's machines made under the patent in suit, from acquiring and using salt depositing machines made by the defendant and from buying from defendant salt tablets for use in said machines;—all with the general end and purpose of maintaining to itself an unlawful monopoly in the sale of unpatented salt tablets for use in the canning industry.

Defendant further charges that plaintiff's method of doing business and that of its predecessor in title had only one purpose,—namely, the doing by indirection what was prohibited directly, that is, the securing of a monopoly in the sale of unpatented salt tablets which do not come within the boundaries of any patent owned by plaintiff. Wherefore, defendant charges that plaintiff is not in equity with cleam hands.

Morton Salt Company,
By Clarence E. Mehlhope,
Its Solicitor,
38 S. Dearborn St.,
Chicago, Ill.

Dated: Chicago, Ill., July 26, 1939.

Offield, Mehlhope, Scott & Poole,
Clarence F. Poole,
Solicitors and of Counsel,
38 S. Dearborn St.,
Chicago, Ill.

22 And on, to wit, the 23rd day of August, 1939, there was filed in the Clerk's office of said Court a certain Memorandum of Judge Holly, in words and figures following, to wit:

Filed Aug. 25, 1939. 23 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—245) * *

MEMORANDUM.

Leave is given to defendant to amend its answer herein, but this order shall not be taken as a final ruling on the sufficiency of the defense which defendant sets up in said amendment.

An order granting leave to file the amendment will be entered Friday, August 25, 1939, at 10 o'clock A. M.

William H. Holly,
Judge.

24 And on, to wit, the 18th day of October, 1939, there was filed in the Clerk's office of said Court the certain Depositions of G. S. Suppiger and C. M. Schofield in words and figures following, to wit:

26 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—245) * *

Depositions Of Witnesses, taken upon waiver of notice and without objection by the Plaintiff, on the 26th day of September, One Thousand Nine Hundred and Thirty-nine, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon of that day, at the office of Mildred J. Cook, #805 Victoria Building, #407 N. Eighth St., in the City of St. Louis, Missouri, before Julia M. Laurent, a Notary Public within and for the City of St. Louis and State of Missouri, in a certain cause now pending in the United States District Court for the Northern District of Illinois, Eastern Division, wherein The G. S. Suppiger Company, a corporation of Delaware, is Plaintiff, and Morton Salt Company, a corporation of Illi is Defendant, on behalf of the Defendant.

27 Appearances:

Lawrence C. Kingsland, Esq., Estill E. Ezell, Esq., 705 Olive St., St. Louis, Mo., on behalf of the Plaintiff.

Clarence E. Mehlhope, Esq., 38 S. Dearborn St., Chicago, Ills., on behalf of the Defendant.

G. S. SUPPIGER, a witness produced on behalf of Defendant, being first duly sworn, testified as follows, to-wit:

Direct Examination by Mr. Mehlhope.

Q. 1. You are G. S. Suppiger, of Belleville, Illinois?
A. Yes, sir.
Q. 2. You are president of the plaintiff company in the above entitled case?
A. Yes, sir.
Q. 3. How long have you been president of that company?
A. Since its organization in 1927.
Q. 4. You are also associated with the Scientific Tablet Company, are you not?
A. Yes, sir.
Q. 5. In what way are you associated with that company?
A. Well, the Scientific Tablet Company is a corporation that has been dissolved.
Q. 6. It is being dissolved?
A. It has been dissolved.
Q. 7. When was it dissolved?
28 A. In June, 1938, and all the [illegible]'s were taken over by The G. S. Suppiger Compa[illegible]
Q. 8. Including patents?
A. Yes, sir.
Q. 9. The entire business?
A. The entire business.
Q. 10. What were you in that company before its dissolution?
A. President.
Q. 11. This suit is based on a patent granted to you, No. 2,060,645, is that correct?
A. Yes.
Q. 12. This patent relates to a machine for depositing salt tablets, does it not?
A. Yes, sir.
Q. 13. Just what is the business of The G. S. Suppiger Company, the plaintiff herein?
A. We are in the canning business.
Q. 14. How long have you been in the canning business?
A. Twenty-five years.

Q. 15. Do you actually can the vegetables?
A. Yes, sir.
Q. 16. What other business have you, if any?
A. We operate this tablet business as a subsidiary.
Q. 17. The salt tablet business?
A. Yes, sir.
Q. 18. Is that a larger business than your canning business?
A. No, it is very much smaller than our canning business.
Q. 19. In the salt tablet business do you make your own salt tablets?
A. Yes, sir.
29 Q. 20. How long have you been doing that?
A. Since 1927.
Q. 21. You mean, that you and your predecessor have been making them since 1927?
A. Yes, sir.
Q. 22. That is, the Scientific Tablet Company?
A. Yes.
Q. 23. Do you build the machines under your patent #2,060,645?
A. We build some machines, and have some machines built by outside companies.
Q. 24. Under that patent?
A. Yes, sir.
Q. 25. Do you build more or less than those built for you by the outside companies?
By Mr. Kingsland: The question is objected to as being entirely immaterial.
A. We build probably more ourselves.
Q. 26. You testified in the suit entitled Scientific Tablet Company and The G. S. Suppiger Company *vs.* John William Ossege, Doing Business as Superior Canning Company, Equity No. 1600, tried in Toledo in February of this year, did you not?
A. Yes, sir.
Q. 27. Were you present during the taking of all the evidence in that case?
A. Yes, sir.
Q. 28. That case was based on a canning process
30 including the step of depositing salt tablets in cans of tomatoes, is that correct?
A. Yes, sir.
Q. 29. And that process was and is carried on either

by hand or by machine for depositing salt tablets, that is correct?

By Mr. Kingsland: The question is objected to as calling for a legal conclusion of the witness. As a matter of fact it asks for an interpretation of the patent and is therefore incompetent?

A. Yes, sir.

Q. 30. You were the patentee of the process patent involved in that case, were you not?

A. Yes, sir.

Q. 31. It appeared in that case that where a machine for depositing the salt tablets was used under license from you, the machine was not sold to the user of the process, is that correct?

A. Yes, sir.

Q. 32. Was it leased to him?

A. It was leased to him yes, sir.

Q. 33. What were the conditions of the lease?

A. That our tablets be used.

Q. 34. Exclusively?

A. Yes.

Q. 35. Who held title to the machine?

A. The Scientific Tablet Company.

Q. 36. Then?

A. Yes.

31 Q. 37. Who holds title to the machine now in such cases?

A. The G. S. Suppiger Company.

Q. 38. You are still leasing the machines, but not selling them, is that correct?

A. Yes, sir.

Q. 39. And all the leases are conditioned upon the exclusive use by the lessee of salt tablets bought from the plaintiff company; is that correct?

By Mr. Kingsland: Just a moment. The question is objected to as calling for a legal construction of a document and this witness is not competent to construe the legal effect of a document, and he is instructed that he isn't required to do so, and the question is objected to as being an incompetent question.

By Mr. Mehlhope (To the witness): Are you going to answer the question?

By Mr. Kingsland: I am instructing the witness not to answer the question.

By Mr. Mehlhope: You are instructing him not to answer?

By Mr. Kingsland: Yes.

Q. 40. Can you produce one of the leases under which your salt tablet depositing machines are put out?

A. Yes, I hand you a form of lease that we are now using.

32 (Witness produces copy of lease requested.)

Q. 41. How long have you used this lease, which I now ask the Notary to mark for identification Defendant's Exhibit No. 1?

Defendant's Exhibit No. 1 marked for identification.

A. Since October 31, 1937.

Q. 42. Did you use a different form of lease prior to that time?

By Mr. Kingsland: The question is objected to as being immaterial.

A. Yes, we had a different form of lease before that time.

Q. 43. Can you produce that form of lease?

A. Yes, this is the old form of lease. I produce a sample form of lease that is filled in.

(Witness produces copy of lease requested.)

By Mr. Mehlhope: The Notary is requested to mark the lease referred to for identification as Defendant's Exhibit No. 2.

Defendant's Exhibit No. 2 marked for identification.

Q. 44. That is the first time you used that form of lease marked for identification Defendant's Exhibit No. 1, October 31, 1937?

A. Yes, sir, we started to use it during the month of October, 1937.

Q. 45. This lease marked for identification De-
33 fendant's Exhibit No. 1 lists a number of patents on depositing machines, including the one in suit here, does it not?

A. Yes, sir.

Q. 46. It also includes the method patent No. 1,887,073, which was involved in the process case in Toledo, does it not?

A. Yes, sir.

Q. 47. When this lease marked for identification Defendant's Exhibit No. 1 is executed and delivered, the depositing machine leased thereunder may come under

one or the other of the several patents on depositing machines listed therein; that is correct?

By Mr. Kingsland: The question is objected to as incompetent, calling for the construction of the lease by this witness, and in addition to that the construction of a patent to determine whether or not it comes under the patent listed. This witness is not competent to answer the question.

By Mr. Mehlhope: I will withdraw the question.

Q. 48. The lease includes four patents on tablet depositing machines: What, if any, difference is there in the machines as leased by you and the machines of the several patents enumerated? Are they all automatic in operation?

A. No, some are mechanically operated and some
34 are electrically operated.

Q. 49. Which ones of those patents relates to an electrically operated depositing machine?

A. Well, this electrically operated machine here, this No. 2,060,645.

Q. 50. The one included in this suit?

A. Yes. The others are all mechanically operated.

Q. 51. Do you build and lease machines under all of said patents?

A. Yes, sir.

Q. 52. Does the machine in each case bear the date and number of the patent under which it is made?

A. I don't think that we have patents pending on them. We just recently got these patents. I think the only sign we have on there is "Patents Pending" on the machine.

Q. 53. The patent in suit here came out in 1936, did it not?

A. Yes.

Q. 54. Haven't you marked any of those "Patented"?

A. I don't know whether we did or not. I don't think so.

By Mr. Mehlhope: The lease marked for identification Defendant's Exhibit No. 1 is offered in evidence as DEFENDANT'S EXHIBIT NO. 1.

Q. 55. Is the lease marked for identification Defendant's Exhibit No. 2 still in force?

35 A. Some of them are still outstanding, I should think.

Q. 56. Can't you state one way or the other?

A. Well, I would say this lease is no longer in existence because the machine was returned, and when a machine is returned we automatically issue a new lease.

Q. 57. What is on that lease to make you say the machine was returned?

A. It is marked on the lease, "Returned 9/25/39".

Q. 58. But it was in force up to that time, is that correct?

A. I suppose so. I couldn't answer that until I would look into our records more fully.

Q. 59. Well, will you please do so and report?

A. Yes.

Q. 60. What was the date you gave there when the machine was returned?

A. September 25, 1939.

By Mr. Mehlhope: (To Mr. Kingsland.) Well, now, you don't object to my having that lease, do you?

By Mr. Kingsland: No, I have no objection.

By Mr. Mehlhope: I now make the same offer of Defendant's Exhibit No. 2.

By Mr. Kingsland: The offer in evidence of Defendant's Exhibits Nos. 1 and 2 is objected to as not being material to any issues in this case.

DEFENDANT'S EXHIBITS 1 and 2 offered in evidence.

36 Q. 61. I hand you a form letter addressed to Reid-Murdoch and Company, Chicago, Illinois, bearing the heading, "Scientific Tablet Company," dated August 16, 1937, signed by Scientific Tablet Company, G. S. Suppiger, President, and ask the Notary to mark this for identification Defendant's Exhibit No. 3.

Defendant's Exhibit 3 marked for identification.

Is that your signature?

A. That is my rubber stamp on it.

Q. 62. Do you recall sending out such a form letter?

A. Probably so.

Q. 63. Can't you answer more definitely?

A. Yes, sir.

Q. 64. It is one of them?

A. Yes.

Q. 65. You sent out a number of such letters to the trade in 1937, did you not?

By Mr. Kingsland: The question is objected to as not material to any issues here. Attention is drawn to the fact this letter was dated in 1937, long before this suit

was instituted, and has nothing to do with the alleged infringement or as to the validity of the patent in suit.

A. Yes.

Q. 66. I hand you another form letter of the same date and bearing the same heading, addressed to Otis E.
37 Norton, Dallas, Texas, which I ask the Notary to mark for identification Defendant's Exhibit 4, and ask you if that is a like form of letter sent to the party named therein?

Defendant's Exhibit 4 marked for identification.

A. It is.

By Mr. Mehlhope: The form letter marked for identification Defendant's Exhibit 3 is offered in evidence on behalf of Defendant as thus marked, and I make the same offer as to Defendant's Exhibit No. 4.

By Mr. Kingsland: The offer in evidence of Defendant's Exhibits 3 and 4 is objected to as incompetent and immaterial to any issues in this case.

DEFENDANT'S EXHIBITS 3 and 4 offered in evidence.

Q. 67. I hand you a form letter bearing the heading "Scientific Tablet Company", dated June 7, 1938, addressed to Thrift Packing Company, Dallas, Texas, bearing the signature G. S. Suppiger, President, and ask you if you can identify that letter?

A. That was sent out.

Q. 68. By you?

A. Yes, sir.

By Mr. Mehlhope: I ask that that letter be marked for identification Defendant's Exhibit 5.

Defendant's Exhibit 5 marked for identification.

38 By Mr. Mehlhope: The letter referred to in the last question is marked for identification Defendant's Exhibit 5, and as thus identified is offered in evidence on behalf of the Defendant.

DEFENDANT'S EXHIBIT 5 offered in evidence.

By Mr. Kingsland: The offer is objected to for the same reasons as last noted.

Q. 69. It was your practice, and that if your predecessor, to send out form letters of the character of Defendant's Exhibits 3, 4 and 5, up to the time the bill was filed in this case on December 30, 1938, was it not?

By Mr. Kingsland: The question is objected to as being entirely indefinite. It is obvious that this witness cannot see what the examining counsel has in mind by

letters of this character, and it is also indefinite in the fixing of the time that such letters may or may not have been sent out.

A. I would say that such letters were sent out. I don't remember just how many or where they went.

Q. 70. Were they sent out under your direction?

A. Yes, sir.

Q. 71. Should you know where they went?

A. They went to the canning trade.

39 Q. 72. In general?

A. In general, yes.

Q. 73. Can you say approximately how many you sent out in 1938?

A. I wouldn't know that.

Q. 74. Approximately?

By Mr. Kingsland: The question is objected to because the witness says he doesn't know and it is improper to ask him to guess.

Q. 75. Who would know, or should know?

A. Probably Mr. Schofield would know better than I would. He looked after the sales.

Q. 76. Are the parties to whom these three letters were sent, namely, Defendant's Exhibits 3, 4 and 5, customers of yours now?

A. Reid Murdoch is.

Q. 77. How about the other two?

A. I don't remember. I cannot recall that they are customers.

Q. 78. Was Reid Murdoch a customer at the time you sent that letter to them?

A. I cannot recall that without looking at the records.

Q. 79. Will you look at the records and let me know, please?

A. Yes.

Q. 80. There would be no purpose, would there, in sending such a letter to one who was already using your depositing machine and using your salt tablets?

By Mr. Kingsland: The question is objected to

40 as indefinite and argumentative.

A. I wouldn't know how to answer that question.

Q. 81. Well, did you in fact send any such letter to one who was not your customer?

A. Well, I couldn't say that until I would see who

the letters were sent to. I wouldn't know who the company sent them to.

Q. 82. Can you give me a list of all the people you sent those letters to?

A. I could not.

Q. 83. Could Mr. Schofield?

A. I don't know whether he could or not. He would know better than I would.

Q. 84. It is possible to obtain the information, is it not?

A. Probably so.

Q. 85. Who, in your company, would have such information, if you have not?

A. Mr. Schofield would have more information than I would. He looked after sales.

Q. 86. You think he would know to whom those letters were sent?

A. I don't know whether he would or not, but he would know (more) about that than I would. I was busy with other work.

Q. 87. Did you send any such letters as defendant's Exhibits 3, 4 and 5 after the bill was filed in this case?

By Mr. Kingsland: Same objection. The question
41 is clearly objectionable, not only because it calls for incompetent evidence for the reasons already given, but it relates to a time subsequent to the filing of the bill.

A. I don't know.

Q. 88. You don't know whether you sent any out or not?

A. No, I don't.

Q. 89. In fact, here is an apparent plan followed by you of sending out such letters under your direction and you really recall nothing about it?

By Mr. Kingsland: Objected to as clearly argumentative. The witness has said he doesn't know and that matter is closed from inquiry.

Q. 90. Can you answer any more?

A. I can't answer any more.

Q. 91. Take the salt depositing machines of the type shown in the patent involved in this case: Approximately what is the cost of manufacture of such a machine?

A. Approximately three hundred dollars.

Q. 92. What rental do you get for such a machine?

A. Thirty dollars per year.

Q. 93. At what price do you sell the salt tablets for use in such a machine? I know there are various sizes, but can you not give me an average price?

42 By Mr. Kingsland: The question is objected to as not being material. The salt tablets per se are not involved in the litigation.

The Witness: Do you want me to answer that question?

By Mr. Kingsland: If you can.

By Mr. Mehlhope: Attention of Plaintiff's counsel is called to the fact that this evidence is taken under the amendment to the answer Section 4a wherein allegations are made as to the unpatented salt tablets, so his objection is obviously not well taken. It is admitted that there are no patents on the sait tablets, this being set forth in the amendment to the answer.

(Last question read by the reporter.)

A. That would be hard to state.

Q. 94. In the Toledo case it was said either by you or one of your witnesses that the salt tablets were about four times as expensive to use as bulk salt. Is that about true?

A. That wasn't said by me. I wouldn't say that is true.

Q. 95. It was said by one of your witnesses?

A. Not by me, though.

Q. 96. Approximately what is the comparison of the
43 cost of loose salt to be used in canning and a like quantity of salt in tablet form?

A. It depends on the size of the tablet. On the large tablet the cost is not over one and a half times the cost of loose salt, whereas in the small tablet it may run two to three times.

Q. 97. Not as much as four?

A. No, not as much as four.

Q. 98. But it is more expensive than the loose salt for use in cans with your process?

A. Well, like any other manufactured article comparing raw salt with the salt tablet, the salt tablet is the manufactured article. The Morton Salt Company gets more for package salt than for bulk salt. It is the same proposition, because it has to go through a manufacturing process.

Q. 99. Are the rentals of all your salt tablet depositing machines thirty dollars?

A. No, the mechanically operated machines rent for a lesser amount.

Q. 100. How much?

A. Fifteen dollars a year.

Q. 101. What is the cost of manufacturing mechanically operated machines?

A. I would say around a hundred dollars.

Q. 102. The end and aim of your business, of
44 course, is to sell salt tablets, isn't it?

A. Yes, that's true.

Q. 103. That is wherein lie your profits,—that is correct, is it not?

A. Yes.

Q. 104. Along in 1926, or thereabouts, you filed an application for a patent covering a salt tablet of predetermined weight for use in canning, did you not?

A. Yes, sir.

Q. 105. That application was pending in the Patent Office for a number of years, was it not?

A. Yes.

Q. 106. And it was finally rejected by the Court of Customs and Patent Appeals, was it not?

A. Yes.

Q. 107. So that now anybody may make a salt tablet of the same kind that you use in your salt depositing machines, is that correct?

A. Yes.

Q. 108. Can you produce, and if so, will you produce, one of your price lists for salt tablets of various sizes?

A. I haven't it with me.

Q. 109. Can you get it?

A. Yes, I can get it.

(Here follows colloquy off the record.)

By Mr. Mehlhope: I now ask to have this paper marked for identification Defendant's Exhibit 6.

Defendant's Exhibit No. 6 marked for identification.

Q. 110. I hand you a license and lease agreement, marked for identification Defendant's Exhibit No. 6,
45 and ask you if that is one of your forms of license?

A. Yes, sir.

Q. 111. This lease, or license agreement, is granted to the Crystal Canneries Company, Crystal City, Texas; the lease has not been executed by the Scientific Tablet Company, or does not appear to have been: Do you know whether such a lease was executed or not?

A. I couldn't say.

Q. 112. Here is the date down here (indicating), the 16th of October, 1937?

A. This was executed, but probably not signed by the lessee. We generally send them to the lessee unsigned, and after he signs it we sign it and return it to him.

Q. 113. Can you find out whether that lease was signed and executed by the Scientific Tablet Company?

A. I can look it up.

Q. 114. Will you please do so?

A. Yes.

By Mr. Mehlhope: The paper marked for identification Defendant's Exhibit No. 6 is offered in evidence on behalf of Defendant as identified.

By Mr. Kingsland: The offer is objected to for the same reasons as noted in respect to the offer of Defendant's Exhibits Nos. 1 and 2.

46 DEFENDANT'S EXHIBIT NO. 6 offered in evidence.

By Mr. Mehlhope: That is all, Mr. Kingsland, except I would like to leave the thing open to get that information I requested.

By Mr. Kingsland: All right. No questions.

At this point a recess was had until two o'clock P. M. of the same day, September 26, 1939.

On this 26th day of September, 1939, the parties met, pursuant to recess above stated, and the further taking of these depositions was had as follows:

G. S. SUPPIGER, having been previously sworn, resumed the stand and further testified as follows:

Mr. Mehlhope: Q. 115. This lease, Defendant's Exhibit No. 2, to Silver Creek Preserving Company, you were to find out whether that was in existence up to the date September 25, 1939: was it in existence?

A. Yes, it was.

Q. 116. Was Reid Murdoch & Company a customer of yours at the time you sent that letter to (them) him?

A. Yes.

Q. 117. What was the purpose of the letter if he was already a customer?

47 A. We sent it to everyone.

Q. 118. Whether he was a licensee or not?

A. Yes.

Q. 119. Now, I asked you the question this morning if you could give me a list of all the people you sent those letters to, Defendant's Exhibits 3, 4 and 5: Have you

refreshed your recollection and can you give me the list now?

A. Mr. Schofield will be prepared to answer that question.

Q. 120. Now, next is the price list of various size tablets?

A. Here is the price list. (Producing same.)

By Mr. Mehlhope: The Notary is requested to mark the price list produced by the witness Defendant's Exhibit No. 7 for identification.

Defendant's Exhibit No. 7 marked for identification.

Q. 121. Are the prices shown on Defendant's Exhibit No. 7 just produced by you the prices as of today?

A. As of today, yes.

Q. 122. How do these prices compare with prices of a year ago?

A. Well, like everything else, they are a little lower.

Q. 123. And how about as compared to two years ago?

A. Well, I don't remember.

Q. 124. You think they are a little less now than they were a year ago?

A. Than last year, yes.

48 By Mr. Mehlhope: The price list marked for identification Defendant's Exhibit No. 7 is offered in evidence on behalf of Defendant as identified.

DEFENDANT'S EXHIBIT NO. 7 offered in evidence.

Q. 125. Have you found out whether the lease, Defendant's Exhibit No. 6, to Crystal Canneries Company, Crystal City, Texas, was executed by that Company?

A. It was not executed by them.

Q. 126. Have they taken a lease since that date?

A. No, the machine was returned.

Q. 127. Is it your custom to send a machine with the lease?

A. The lease is sent with the machine and sometimes they sign it and sometimes they don't.

Q. 128. And if they don't sign the lease they return the machine?

A. Not all the time. A lot of times they order the machine and we try to get them to sign a lease, but we can't go calling on them if it is a far distance away, and they return the machine. In this case they had the machine for two years until we finally got it returned.

Q. 129. During that time did they buy tablets from you?

A. I cannot recall that. I don't know.

Q. 130. I failed this morning to get you to identify
49 an additional form letter. I now ask the Notary to mark this letter Defendant's Exhibit No. 8 for identification.

Defendant's Exhibit No. 8 marked for identification.

This letter is addressed to the Mulkey Salt Company, Detroit, Michigan, and is dated August 17, 1937: Can you identify that as a form letter sent out by you to that Company?

A. Yes.

By Mr. Mehlhope: The letter marked for identification Defendant's Exhibit No. 8 is offered in evidence on behalf of Defendant as identified.

By Mr. Kingsland: Same objection.

DEFENDANT'S EXHIBIT NO. 8 offered in evidence.

Q. 131. Do you know the Lake Erie Canning Company, of Sandusky, Ohio?

A. I do.

Q. 132. Do you recall sending a letter such as these form letters, Defendant's Exhibits 3, 4 and 5, and this last one, Defendant's Exhibit 8, to that concern?

A. I don't remember specifically but those are all form letters and probably they got one too.

By Mr. Mehlhope: That is all, Mr. Suppiger, thank you.

(Witness excused.)

50 Stipulation.

It is stipulated and agreed by and between the parties hereto, through their respective counsel, that the signature of the witness may be expressly waived.

C. M. SCHOFIELD, a witness produced on behalf of Defendant, being first duly sworn, testified as follows, to-wit:

Direct Examination by Mr. Mehlhope.

Q. 1. You are C. M. Schofield, of Belleville, Illinois?

A. I was then. I am of St. Louis now.

Q. 2. Are you associated with The G. S. Suppiger Company, the plaintiff in this case?

A. Yes, sir.

Q. 3. What is your connection with that Company?

A. I am general assistant to the Manager.

Q. 4. Who is the Manager?

A. Mr. G. S. Suppiger.

Q. 5. Did you have the same capacity in the Scientific Tablet Company?

A. Yes, sir.

Q. 6. You have been present during the taking of the deposition of Mr. G. S. Suppiger this afternoon?

A. Yes, sir.

51 Q. 7. Do you know the Harlingen Canning Company, of Harlingen, Texas?

A. Yes, sir.

Q. 8. Have they a lease with The G. S. Suppiger Company?

A. Yes, sir.

Q. 9. Is it still in force?

A. Yes, sir.

Q. 10. What machine is leased to them, the one under the patent in suit herein, the electric machine?

A. Yes, one of our electrically operated machines.

Q. 11. Disclosed in the patent in suit here?

A. Yes, sir.

Q. 12. You know, of course, Libby, McNeill & Libby, of Wyoming, Delaware, do you not?

A. Yes,sir.

Q. 13. Is that concern a lessee of yours?

A. Yes, sir.

Q. 14. They buy their salt tablets from you?

A. I think they have bought all they used from us.

Q. 15. Their lease is still in force, you say?

A. Not at Wyoming.

Q. 16. Where is it in force?

A. At their plant at Manzanola, Colorado.

Q. 17. What machine is leased to them?

A. They have a shaft driven machine, what we call a Model F at Wyoming.

Q. 18. Is that machine the kind disclosed in this Patent No. 1,195,337?

52 A. Well, some of the details are the same, but it is not an electrically operated machine or a power operated machine. It is what we call a can operated model.

Q. 19. Is it a machine of that patent used by Libby, McNeill & Libby?

A. No.

Q. 20. Which one is it then?

A. It is a can operated machine. It is the machine under patent #2,060,645.

Q. 21. That is the patent in suit?

A. Yes.

Q. 22. It is electrically operated, isn't it?

A. It can be operated either by electric power or by a shaft. The motor is not a part of the machine. It is merely a shank to operate the machine.

Q. 23. It is electro-magnetically controlled?

A. No, not on the machine they have at Wyoming. It is operated by straight shaft.

Q. 24. Has the other machine been returned, the one they had at the other place?

A. I cannot from my memory locate which machines are in and out, but they have had the electrically operated machines at times, and then they have been exchanged at other times for other types of machines.

Q. 25. Which machine have they still got in use, the one made under the patent in suit, or the one disclosed
53 under the patent in suit, that is No. 2,060,645?

A. Well, the features of the patent are not in the electric operation. Consequently, the machine would have the same operating device but it would be operated, get its power from a different factor than the electric motor.

Q. 26. What factor is that?

A. A shaft such as operates a belting machine or conveyor is frequently used to operate the power to operate the depositing machine. That eliminates the electric motor altogether.

Q. 27. Do you know Phillips Brothers, of Salisbury, Maryland?

A. Yes.

Q. 28. Is that concern a lessee of yours?

A. Yes.

Q. 29. What machine is leased to them?

A. They have two of our Model-F machines. Those are power driven machines,—and one can operated machine.

Q. 30. And the leases in all these cases are like the lease Defendant's Exhibit #1, is that correct?

A. They are with the exception of where they had a machine long enough to have the earlier form of lease, which I believe you have under Exhibit No. 2.

Q. 31. In other words, they have either one or the other of those leases?

A. Yes.

Q. 32. In each case?

A. In each case.

54 Q. 33. You are familiar with this letter marked Defendant's Exhibit #5, dated June 7, 1938, one of the form letters sent out to your trade?

A. Yes, I am familiar with it.

Q. 34. Can you state whether that letter was sent to the Reagan Canning Company, of McAllen, Texas?

A. It was sent to our mailing list of canners in the United States. I would presume it was sent to them because their name is on that list.

Q. 35. Can you make the same statement as to the Schmidt Canning Company, of San Benito, Texas?

A. Yes, sir.

Q. 36. And as to the Griggs Canning Company, Natalia, Texas?

A. Yes, sir.

Q. 37. Can you make the same statement with regard to the Orange Products Company, of Orange, Texas?

A. Yes, sir.

Q. 38. And as to the Marshal Canning Company, Sugarland, Texas?

A. Yes, sir.

Q. 39. And the Crystal Canneries Company, Crystal City, Texas?

A. Yes, sir.

Q. 40. And as to the E. R. Adams Canning Company, Jacksonville, Texas?

A. I don't recognize that name, but if their name
55 was on the list they would get a copy of the letter.

Q. 41. You don't know whether any one of these companies is a lessee of yours now?

A. I think the Orange Products Company, of Orange, Texas, are users of our machine.

Q. 42. And that lease is like Defendant's Exhibit #1, the present day lease of yours?

A. Well, I would have to check it,—but either one of the two.

Q. 43. Either one or the other?

A. Yes. There only have been two in use.

Q. 44. Do you know about how many leases there are out, either like Defendant's Exhibit 1 or Defendant's Exhibit 2, giving the lessee the right to use the machine disclosed in the patent in this suit?

A. No, I don't know. I haven't the statistics in a form that I could quote it. If it is a matter of necessity I could ascertain it but I couldn't do it offhand because I don't have that figure in my mind. There might be two hundred.

Q. 45. That is, two hundred of the machines that are disclosed in the patent in this suit are in the hands of lessees?

A. That is my estimate, yes.

Q. 46. And you sell the salt tablets for depositing
56 in these machines to those lessees?

A. As far as possible, yes.

Q. 47. Do you travel to see the trade, the canneries, to introduce this lease of yours and these machines?

A. Yes, I do most of the traveling.

Q. 48. Where do you travel in this connection?

A. In the various canning districts, such as, what we call the Tri-State District, around Baltimore, Maryland, Indiana, the Ozark District, and other canning districts.

Q. 49. How about Texas?

A. Texas, Louisiana and Mississippi.

Q. 50. And in visiting these canneries you try to persuade them to take over one or the other of your patented machines and use them in the canning business, depositing your own tablets of your Company, is that correct?

A. Our prime object is to sell them on the use of the tablets. The depositing machine is a secondary adjunct. It is possible to use the tablets without a depositing machine, and some of them do. Our main purpose is to persuade them to give consideration to the advantages of the salt tablet itself in the packing of their vari-
57 ous commodities. Secondarily, they ask for some kind of aid in getting the tables into the cans, and that brings up the question of the depositing machine.

Q. 51. You lease them the machine which under your patent will meet their particular condition?

A. Yes, sir, we do.

Q. 52. And the lease at present that you are referring to is Defendant's Exhibit No. 1?

A. Yes, No. 1.

Q. 53. And you have been doing that since October, 1937?

A. Yes, October, 1937 was when that lease came into use. Prior to that we had used Exhibit No. 2.

By Mr. Mehlhope: That is all.

By Mr. Kingsland: No questions.

(Witness excused.)

STIPULATION.

It is stipulated and agreed by and between the parties hereto, through their respective counsel, that the signature of the witness be expressly waived.

By Mr. Mehlhope: I would like to suggest to Mr. Kingsland, if he doesn't object, that we have copies made of all these exhibits and stipulate that the originals may be retained in the hands of counsel and attach a true copy
58 of each exhibit to the original depositions.

Mr. Kingsland: I have no objection.

STIPULATION.

It is stipulated and agreed by and between the parties, through their counsel, that the paper exhibits offered in evidence at this hearing in connection with these depositions be retained in the hands of counsel until the hearing, the Notary being instructed to make copies thereof, one for each party, and substitute copies in place of the original exhibits to the depositions.

(Depositions Closed.)

State of Missouri,
City of St. Louis,
Eastern Judicial District,
Eastern Division. } ss.

I, Julia M. Laurent, a Notary Public within and for the City of St. Louis, State of Missouri, duly commissioned, qualified and authorized to administer oaths, and take and certify to depositions, do hereby certify that pursuant to waiver of notice agreed to by the parties hereto through their respective counsel, in the civil cause now pending and undetermined in the District Court of the United States, for the Northern District of Illinois, Eastern
59 Division, wherein The G. S. Suppiger Company, a corporation of Delaware, is Plaintiff, and Morton Salt Company, a corporation of Illinois, is Defendant. I was attended at Room #805 Victoria Building, #407 North Eight Street, in the City of St. Louis, Missouri, by Lawrence C. Kingsland, Esq., and Estill E. Ezell, Esq., counsel for the Plaintiff, and Clarence E. Mehlhope, Esq., counsel for defendant and G. S. Suppiger and C. M. Schofield, the witnesses, commencing at ten A. M. on the 26th day of September, 1939, and continuing thereafter until completed. The said witnesses, being of sound mind and lawful age, and being by me first carefully examined, cautioned and duly sworn to testify the truth, the whole truth, and nothing but the truth in accordance with law, thereupon testified as is shown in the foregoing transcript; that the said testimony was by me, in the presence of the beforenamed witnesses taken down in shorthand and afterwards by me transcribed into typewriting from said shorthand notes; and that the foregoing 33 pages correctly set forth the testimony of the beforenamed witnesses, together with the questions propounded by counsel and remarks of counsel in connection therewith, present at said hearing; that the foregoing depositions are a true record of the testimony given by the witnesses; that in accordance with stipulation entered into by counsel the
60 signatures of the beforenamed witnesses to their depositions are expressly waived.

The reason for taking the said deposition was, and is, and the fact was, and is, that the said witnesses reside more than one hundred miles distant from the place where the said suit is now pending and undetermined.

I am not of counsel nor attorney nor related to either of the parties to said suit, nor interested in the event thereof.

I further certify that the exhibits used by the witnesses in testifying are attached to the depositions by attaching a true copy thereof in lieu of the originals, the said originals being retained by counsel for Defendant until the date of trial, in accordance with Stipulation entered into appearing on Page 34 of this record.

It being impracticable for me to deliver said depositions and the exhibits thereto attached with my own hands into the court for which said depositions were taken, I have retained the same for the purpose of being sealed and directed with my own hand and speedily and safely transmitted to said court for which they were taken, there to remain under my seal until opened.

I further certify that my fee for taking said depositions is $....., and the same is just and reason-
61 able, which sum has been paid me by Attorneys for Defendant.

My Commission as Notary Public will expire on the 5th day of February, 1941.

Witness my hand and seal of office in the City of St. Louis, Missouri, on this 17th day of October, 1939.

John M. Laurent,

(Seal) *Notary Public within and for the City of St. Louis, State of Missouri.*

62 And on, to wit, the 18th day of October, 1939 came the defendant by its attorneys and filed in the Clerk's office of said Court its certain Exhibits Nos. 1, 2, 3, 5, 7, and the addresses and "Subject" of Defendant's Exhibits 4 and 8 with the statement "same as defendant's Exhibit 3", in words and figures following, to wit:

63 DEFENDANT'S EXHIBIT NO. 1.

License and Lease Agreement.

This Agreement, by and betw n Scientific Tablet Company, a corporation of Illinois, aving its principal office and place of business at Belleville, Illinois, hereinafter called either Scientific or Owner, for itself, its successors

and assigns, party of the first part, and .....
..... a ..... of ....., having its principal office and place of business at .....
hereinafter called Lessee, party of the second part,

Witnesseth That:

Whereas Scientific is the owned of certain letters patent and applications for letters patent including patents:

United States	1,887,073	for Method of Flavoring in Canning, Preserving and the Like;
Canadian	328,703	
British	399,322	
German	594,342	
United States	1,824,695	for Tablet Depositing Machines;
United States	2,060,645	
United States	1,884,365	
United States	1,945,337	

the inventions comprehended within said patents being hereinafter designated "said inventions"; and

Whereas Scientific is engaged in the manufacture and sale of flavoring tablets for use in carrying out the purposes and objectives of the above patents and applications for patent, and also the manufacture and rental of certain machines of assistance for such use;

Whereas the Lessee is desirous of obtaining a license to enjoy said inventions, and a lease of a machine for practicing the same;

Now, Therefore, in consideration of the rentals and other terms and conditions set out herein, the parties agree as follows:

1. Scientific hereby grants Lessee a license to practice said inventions, and a lease to use (1) only Tablet Depositing Machine No. ....., Type .....,
Serial No. ....., valued at $.....,
64 on condition that such practice of said inventions and use of said Tablet Depositing Machine be limited entirely and exclusively to use with tablets obtained from Scientific.

2. As royalty for the practice of said inventions and rental for the use of said Machine, Lessee agrees to pay the Owner the sum of ..... Dollars ($.....) for each year or part thereof, such sum to be paid upon receipt of this machine for the year or operating portion thereof beginning with that day, and

thereafter, the rent to be paid on each anniversary of the receipt day for the year or operating portion thereof to follow the particular anniversary.

3. This agreement shall run from year to year from the receipt date, and may be terminated only by written notice of either party given to the other at least thirty (30) days prior to an anniversary of said receipt date to be effective on such anniversary; save that the Owner may terminate this agreement upon breach of any of the terms or conditions hereof.

4. It is agreed that the Tablet Depositing Machine of this agreement shall be installed in Lessee's plant, located at ....., and shall not be removed therefrom without written notice to the Owner, and shall be used only by the Lessee itself and no other.

5. Upon termination of this agreement for any reason by either party, the Tablet Depositing Machine shall be promptly returned in first class working condition, transportation prepaid, to Owner at Belleville, Illinois, or to such other place as Owner may direct.

6. Lessee agrees that it will not contest the validity of any patents under which it is hereby licensed.

Executed in duplicate this ..... day of ....., A. D., 19.....

Scientific Tablet Company,

Lessor,

By .....

President.

.....

Lessee,

By .....

(Official title) .....

65 DEFENDANT'S EXHIBIT NO. 2.

No.

Scienco Depositing Machine Rental Agreement

By and Between

Scientific Tablet Company
Belleville, Illinois
Hereinafter Called the Owner

and

Silver Creek Preserving Company
Hereinafter Called the Lessee

Now, Therefore, This Agreement Witnesseth:

(1) The Owner, in consideration of the payment of the rent hereinafter stated, and in consideration of the agreements by the Lessee hereinafter stated, does hereby lease to the Lessees one (1) Depositing Machine No. 1588, Type 40-50, Serial No. 37-F, valued at $175.00, for the term of One Year.

(2) The Lessee agrees to pay to the Owner the sum of $25.00 per year, said sum to be invoiced on shipment of above machine and the sum of $25.00 each year, fifteen days from the anniversary of the date of shipment for such further years as this lease shall be continued, and further agrees to the covenants printed on the back hereof, which are a part of this agreement.

(3) This lease shall be deemed renewed from year to year unless ten days prior to expiration of any year either party shall notify the other in writing to terminate same.

(4) It is agreed that the machine covered by this lease will be located in Lessee's plant at Silver Creek, New York.

Accepted July 26, 1937:
Silver Creek Preserving Corp.,
By: (Signed) N. B. Pratt,
Pres.

Submitted July 23, 1937:
Scientific Tablet Co.,
By .....

.....
Agent.

(Returned 9/25/39)

66 (Printed matter on back of Agreement:)

Whereas, the Owner is engaged in the business of manufacturing and selling certain compressed flavoring tablets which may or may not be covered by letters patent of the United States and owned by it, and is also the manufacturer and owner of a certain machine mentioned on the face hereof, which may or may not be covered by letters patent of the United States, and owned by it, which machine is designed for use in depositing said compressed flavoring tablets into sanitary can; and

Whereas, the Lessee is desirous of obtaining the use of said machine in his business for the sole purpose of depositing flavor tablets in cans which tablets are to be purchased from the owner.

Now, Therefore, the Lessee covenants as follows:

A. The Lessee covenants and agrees that he will accept delivery of said machine at Owner's factory, Belleville, Illinois and will at his own cost and charges during said term keep said machine in good working order and repair, and at the end of said term at his own cost and charges re-deliver said machine to the Owner at its factory at Belleville, Illinois, in as good condition as it is at the date of execution of these presents, ordinary reasonable wear and tear excepted.

B. The Lessee covenants and agrees to procure from the Owner only, except in cases of emergencies, and to pay for any and all repair parts that may be necessary in order to keep and maintain the said machine in good working order and repair.

C. The Lessee covenants and agrees that the Owner will not be responsible for claims arising out of damages or injury sustained by employees of the Lessee, or others, in the event of accident; nor for claims arising out of damages to material due to defective operation of said machine, or for claims arising out of damage to material used in connection with the operation of said machine including tablets and cans; nor for claims arising out of any other matter whatsoever, after shipment of said machine.

D. The Lessee covenants and agrees that he shall
67 not during said term remove the said machine from the premises now occupied by him except with the written consent of the Owner.

E. The Lessee covenants and agrees to keep and use

said machine only at the plant location appearing on the reverse side hereof, and that he will not sublet, assign, pledge or transfer his interest therein nor remove the same from such plant location nor part with the possession of said machine either directly or indirectly to any person or persons whomsoever other than the Owner or its agent, without the written consent of the Owner.

F. The Lessee covenants and agrees that the Owner or its agent may at all reasonable times enter upon the Lessee's premises for the purpose of examining the said machine. The Lessee agrees to give prompt notice to the Owner of the loss of or serious damage to said machine.

G. The Lessee covenants and agrees that the said machine shall be used exclusively for depositing compressed flavoring tablets purchased from the Owner and for no other purpose.

H. If default shall be made in any payment or payments provided in this agreement, or if the said Lessee shall fail to carry out any of the covenants or agreements contained herein, then and in each such case and also at the expiration of the said term, all rights of the Lessee hereunder shall cease forthwith, and the Lessee shall forthwith at his own cost and charges deliver the said machine to the Owner at its factory at Belleville, Illinois, and on the Lessee's failure to deliver said machine the Owner or its agent may resume actual possession thereof; and the Lessee hereby authorizes and empowers the Owner or its agents to enter the premises wherein said machine may be and take and carry the same away, hereby waiving any action for trespass or damage therefor and disclaiming any right of resistance thereto. Permission is hereby given to the Owner and its agents to use such force as may be necessary to enter the premises and to take and carry away the machine. Such resumption of possession shall not release the Lessee from any liability for rent or damages hereunder.

I. The Lessee further covenants and agrees that
68 if at any time before the delivery as hereinbefore called for of the machine to the Owner at its factory by the Lessee, the Lessee shall fail or be unable to make such re-delivery by reason of the loss or damage to the said machine beyond repair, whatever be the cause of said loss or damage, then and in that case all rights of the Lessee hereunder shall cease forthwith and the value of

the same as stated on the face hereof (which value is hereby agreed to) shall be forthwith paid by the Lessee to the Owner for the loss thereto for the damages thereto beyond repair (said machine not being generally made or procurable in the market). The Owner shall be the sole judge of whether the damage to the machine permits of repair.

J. The Lessee further covenants and agrees that Strikes, Fires, accidents to machinery, differences with workmen, or other unavoidable causes will excuse the Owner from executing or the Lessee from requesting shipment of the machine against this lease.

69 DEFENDANT'S EXHIBIT NO. 3.

Scientific Tablet Company

"Scienco"

Food Flavoring Tablets and Depositing Equipment Under U. S. Patent No. 1887073, Canadian Patent No. 328703 and other patents pending of food flavoring in tablet form for use in any type container with or without depositing equipment.

2628 West Main Street Belleville, Illinois, U. S. A.

August 16, 1937.

Reid Murdock & Co.
Chicago, Ill.

Subject: Patent rights concerning Flavoring Material in compressed Tablet form.

Gentlemen:—

It is rather generally known throughout the canning industry that process patents have been granted to the Scientific Tablet Co., covering the use of compressed flavoring materials in the processing of canned and bottled foods—these patents being U. S. No. 1887073 and Canadian Patent No. 328703 shown in our letterhead above and stenciled on the barrels of our shipments—also British Patent No. 399322.

Inquiry has developed as to the Patent relationship between the Tablet Depositing Machines and the Tablets

themselves and we are therefore, issuing this general information to make the relationship clear.

The Depositing Machines are merely a more convenient and rapid method of depositing the various sizes of Tablets into the various sizes of containers and their original mechanical features are individually covered by patent applications granted or pending.

The process patents named above, apply to the Tablets without regard to the Depositors and covers Tablet usage for the purpose intended whether the Tablets are inserted mechanically or by hand.

Depositors are leased in the United States and sold in Canada under individual Depositor numbers and the signed lease agreements provide for their use with Tablets manufactured exclusively by the Scientific Tablet Company in the United States of America or its Canadian Licensee.

70 It would be an infringement on the process patents U. S. No. 1887073, Canadian Patent No. 328703 or British Patent No. 399322 to make use of compressed flavoring material Tablets in canning practices in accordance with these patents, where such Tablets are not manufactured by the Scientific Tablet Company in the United States of America or its Licensee, Canadian Industries Limited, in the Dominion of Canada.

Very truly yours,
Scientific Tablet Company,
(G. S. Suppiger),
G. S. Suppiger,
President.

GSS/ak

71 DEFENDANT'S EXHIBIT NO. 4.

Scientific Tablet Company

"Scienco"

Food Flavoring Tablets and Depositing Equipment

Under U. S. Patent No. 1887073, Canadian Patent No. 328703 and other patents pending of food flavoring in tablet form for use in any type container with or without depositing equipment

2628 West Main Street Belleville, Illinois, U. S. A.

August 16, 1937

Mr. Otis E. Norton
1008 First Nat'l. Bank Bldg.
Dallas, Texas

Subject: Patent rights concerning Flavoring Material in compressed Tablet form.

Dear Sir:

It is rather generally known throughout the canning industry that process patents have been granted to the Scientific Tablet Co., covering the use of compressed flavoring material in the processing of canned and bottles (d) foods—these patents being U. S. No. 1887073 and Canadian Patent No. 328703 shown in our letterhead above and stenciled on the barrels of our shipments—also British Patent No. 399322.

Inquiry has developed as to the Patent relationship between the Tablet Depositing Machines and the Tablets themselves and we are therefore, issuing this general information to make the relationship clear.

The Depositing Machines are merely a more convenient and rapid method of depositing the various sizes of Tablets into the various sizes of containers and their original mechanical features are individually covered by patent applications granted or pending.

The process patents named above, apply to the Tablets without regard to the Depositors and covers Tablet usage for the purpose intended whether the Tablets are inserted mechanically or by hand.

Depositors are leased in the United States and sold in

Canada under individual Depositor numbers and the
72 signed lease agreements provide for their use with Tablets manufactured exclusively by the Scientific Tablet Company in the United States of America or its Canadian Licensee.

It would be an infringement on the process Patents U. S. No. 1887073, Canadian Patent No. 328703 or British Patent No. 399322 to make use of compressed flavoring material Tablets in canning practices in accordance with these patents, where such Tablets are not manufactured by the Scientific Tablet Company in the United States of America or its Licensee, Canadian Industries Limited, in the Dominion of Canada.

Very truly yours,
Scientific Tablet Company
(G. S. Suppiger)
G. S. Suppiger,
President.

GSS/ak

73 DEFENDANT'S EXHIBIT NO. 5.

Scientific Tablet Company

"Science"

Food Flavoring Tablets and Depositing Equipment

Offered Under U. S. Patent No. 1,887,073, Canadian Patent No. 328,703 and other Patents Pending of Food Flavoring in Tablet form for use in any type food container with or without depositing equipment.

1530-48 N. Hadley St. St. Louis, Mo., U. S. A.
Phone Chestnut 1682

June 7, 1938

Thrift Packing Co.,
Dallas, Tex.

Gentlemen:

Supplementing the information in our letterhead above, referring to patent rights granted exclusively to ourselves by U. S. Patent Office in use of compressed salt or other flavoring tablets in canned or bottled foods.

You may be solicited to buy such tablets of other manu-

facture. Our patent counsel advises that canners using tablets not of our manufacture for the practice of the process covered by the above patent, become infringers of the patent, and are liable to suit for infringement and for recovery of profits and damages—one such case being now in Federal Circuit Court.

But, regardless of legal angles, canners who know the situation appreciate our pioneering relationship to the whole salt tablet story, because our ten years contact with the trade has kept them familiar with our efforts to develop this service.

They also appreciate the large percentage of each year's income spent on tablet depositing machine improvement, and that machines are rented at a fraction of their cost—under lease agreements to use "Scienco Saltabs" in same.

We now introduce better pricing arrangements—a new special 5% cash discount cuts net costs of each size materially. Quantity discounts in addition to cash discount comprise 3% on all accumulated season's purchases of
74 $100.00 and upward—5% on $250.00 and upward—8% on $500.00 and upward.

Warehouse stocks are now at several convenient points, and we attach new price list, f. o. b. your nearest warehouse.

We solicit your patronage, believing we will be sustained in our rights and permitted to continue the development of this specialty service to its eventual perfection.

Send your orders now for 1938 packing season—it will save delivery delay later.

Very truly yours,
Scientific Tablet Company
(G. S. Suppiger)
B. S. Suppiger,
President.

GSS:AB

75 DEFENDANT'S EXHIBIT NO. 6.

License and Lease Agreement.

This Agreement, by and between Scientific Tablet Company, a corporation of Illinois, having its principal office and place of business at Belleville, Illinois, hereinafter called either Scientific or Owner, for itself, its successors and assigns, party of the first part, and Crystal Canneries, Inc., a ..... of ....., having its principal office and place of business at Crystal City, Texas, hereinafter called Lessee, party of the second part,

Witnesseth That:

Whereas Scientific is the owner of certain letters patent and applications for letters patent including patents:

United States	1,887,073	for Method of Flavoring in Canning, Preserving and the Like;
Canadian	328,703	
British	399,322	
German	594,342	
United States	1,824,695	for Tablet Depositing Machines;
United States	2,060,645	
United States	1,884,365	
United States	1,945,337	

the inventions comprehended within said patents being hereinafter designated "said inventions"; and

Whereas Scientific is engaged in the manufacture and sale of flavoring tablets for use in carrying out the purposes and objectives of the above patents and applications for patent, and also the manufacture and rental of certain machines of assistance for such use;

Whereas the Lessee is desirous of obtaining a license to enjoy said inventions, and a lease of a machine for practicing the same;

Now, Therefore, in consideration of the rentals and other terms and conditions set out herein, the parties agree as follows:

1. Scientific hereby grants Lessee a license to practice said inventions, and a lease to use (1) only Tablet Depositing Machine No. 1502, Type 60, Serial No. 368S, valued at $75.00, on condition that such practice of said
76 inventions and use of said Tablet Depositing Machine be limited entirely and exclusively to use with tablets obtained from Scientific.

2. As royalty for the practice of said inventions and rental for the use of said Machine, Lessee agrees to pay the Owner the sum of Fifteen and 00/100 Dollars ($15.00) for each year or part thereof, such sum to be paid upon receipt of this machine for the year or operating portion thereof beginning with that day, and thereafter, the rent to be paid on each anniversary of the receipt day for the year or operating portion thereof to follow the particular anniversary.

Date of shipment of this machine: Dec. 22, 1936.

3. This agreement shall run from year to year from the receipt date, and may be terminated only by written notice of either party given to the other at least thirty (30) days prior to an anniversary of said receipt date to be effective on such anniversary; save that the Owner may terminate this agreement upon breach of any of the terms or conditions hereof.

4. It is agreed that the Tablet Depositing Machine of this agreement shall be installed in Lessee's plant, located at Crystal City, Texas, and shall not be removed therefrom without written notice to the Owner, and shall be used only by the Lessee itself and no other.

5. Upon termination of this agreement for any reason by either party, the Tablet Depositing Machine shall be promptly returned in first class working condition, transportation prepaid, to Owner at Belleville, Illinois, or to such other place as Owner may direct.

6. Lessee agrees that it will not contest the validity of any patents under which it is hereby licensed.

Executed in duplicate this 16th day of October, A. D. 1937.

Scientific Tablet Company,
Lessor.

By.....
President.

.....
Lessee.

By.....
(Official Title).....

77 DEFENDANT'S EXHIBIT NO. 7.

Price List

Effective July 15, 1939

White Cross

Reg. U. S. (White Cross) Pat. Office

"Scienco" Salt Tablets

Manufactured Exclusively by
Scientific Tablet Co.

Division of The G. S. Suppiger Co.

1530 Hadley St. St. Louis, Missiouri, U. S. A.

Tablet Size	Quantity Per Box	Gross Wgt. Per Box	Net Wgt. Tabs. only	Net Price Per 1000
15 gr.	25680	57 lb.	55 lb.	10½c
20 gr.	19250	57 lb.	55 lb.	12½c
25 gr.	15400	57 lb.	55 lb.	14c
30 gr.	12830	57 lb.	55 lb.	16c
35 gr.	11000	57 lb.	55 lb.	17½c
40 gr.	9600	57 lb.	55 lb.	18½c
50 gr.	7000	52 lb.	50 lb.	20½c
60 gr.	5800	52 lb.	50 lb.	22c
75 gr.	4660	52 lb.	50 lb.	24½c
90 gr.	3880	52 lb.	50 lb.	26c
100 gr.	3500	52 lb.	50 lb.	27½c
150 gr.	2300	52 lb.	50 lb.	35c
200 gr.	1750	52 lb.	50 lb.	50c
250 gr.	1400	52 lb.	50 lb.	60c
300 gr.	1165	52 lb.	50 lb.	70c
350 gr.	1000	52 lb.	50 lb.	80c
400 gr.	875	52 lb.	50 lb.	90c

F. O. B. Shipping Point: St. Louis, Mo.

Terms: Subject to approved credit, 2% 10 days; Net 30 days. Otherwise Sight Draft Attached to Bill of Lading.

78 DEFENDANT'S EXHIBIT NO. 8.

Scientific Tablet Company

"Scienco"

Food Flavoring Tablets and Depositing Equipment Under U. S. Patent No. 1887073, Canadian Patent No. 328703 and other patents pending of food flavoring in tablet form for use in any type container with or without depositing equipment.

2628 West Main Street — Belleville, Illinois, U. S. A.

August 17, 1937

Mulkey Salt Co.
United Art Bldg.
Detroit, Mich.

Subject: Patent rights concerning Flavoring Material in compressed Tablet form

Gentlemen:

It is rather generally known throughout the canning industry that process patents have been granted to the Scientific Tablet Co., covering the use of compressed flavoring materials in the processing of canned and bottled foods—these patents being U. S. No. 1887073 and Canadian Patent No. 328703 shown in our letterhead above and stenciled on the barrels of our shipments—also British Patent No. 399322.

Inquiry has developed as to the Patent relationship between the Tablet Depositing Machines and the Tablets themselves and we are therefore, issuing this general information to make the relationship clear.

The Depositing Machines are merely a more convenient and rapid method of depositing the various sizes of Tablets into the various sizes of containers and their original mechanical features are individually covered by patent applications granted or pending.

The process patents named above, apply to the Tablets without regard to the Depositors and covers Tablet usage for the purpose intended whether the Tablets are inserted mechanically or by hand.

Depositors are leased in the United States and sold
79 in Canada under individual Depositor numbers and the signed lease agreements provide for their use with Tablets manufactured exclusively by the Scientific Tablet Company in the United States of America or its Canadian Licensee.

It would be an infringement on the process Patents U. S. No. 1887073, Canadian Patent No. 328703 or British Patent No. 399322 to make use of compressed flavoring material Tablets in canning practices in accordance with these patents, where such Tablets are not manufactured by the Scientific Tablet Company in the United States of America or its Licensee, Canadian Industries Limited, in the Dominion of Canada.

Very truly yours,
Scientific Tablet Company
(G. S. Suppiger)
G. S. Suppiger,
President.

GSS/ak

86 And on, to wit, the 27th day of May, 1940, came the Defendant by its attorneys and filed in the Clerk's office of said Court its certain Exhibits Nos. 9, 10, 11 and 12 in words and figures following, to wit:

87 DEFENDANT'S EXHIBIT NO. 9.

Marshall Canning Company
Marshalltown, Iowa

August 3, 1937

Mr. Arthur C. McCune
c/o Morton Salt Company
Chicago, Illinois

Dear Arthur:

Some few days ago the salesman for the Scientific Salt Tablet Company called on our people at Matthews and warned them against using any of the Dispensers that you are putting out, and the Scientific Salt Tablet Company claims that your machine was infringing on their patents. This salesman also stated that if we used the machines we would be liable for damages along with the Morton Salt

Company. I am simply passing this information along for your information.

Yours truly,
Marshall Canning Company
(Signed) By F. E. Brewer,
President.

FEB:LRM

(Signed) Amanda P. Bragg,
Notary Public.

(Seal)

Nov. 30, 1939.

88 DEFENDANT'S EXHIBIT NO. 10.

August 4, 1937

Scientific Salt Tablet Company,

Gentlemen:

The Marshall Canning Company of Marshalltown, Iowa have called our attention to the fact that one of your salesmen has called on them and warned them against using any of the dispensers which we are having manufactured on the ground that our machine infringes your patent.

We are advised by our patent attorneys that our machine unquestionably does not infringe any of your patents. In view of this situation statements such as you are making to the Marshall Canning Company are injurious to our business and in our opinion constitute unfair competition and if persisted in by you it is our purpose to call the matter to the attention of the Federal Trade Commission and ask them to issue a cease and desist order against you.

Yours truly,
Morton Salt Company
By:
(Signed) Amanda P. Bragg,
Notary Public.

(Seal)

Nov. 30, 1939.

89 DEFENDANT'S EXHIBIT NO. 11.

Lawrence C. Kingsland
Counsellor at Law

705 Olive Street
St. Louis, Missouri
August 9, 1937

Morton Salt Company
208 W. Washington Street
Chicago, Illinois

Gentlemen:

The Scientific Tablet Company, of Belleville, Illinois, has handed to me for reply your letter of August 4, 1937, to them.

You apparently are misinformed about statements alleged to have been made by salesmen of the Scientific Tablet Company. My client is not even aware that you are furnishing dispensers or dispensing machines to the canning trade.

The Scientic Tablet Company, as you no doubt are aware, have put out dispensing machines, and these machines are put out under a lease agreement. They are also, as you are aware, owners of U. S. Letters Patent No. 1,887,073, dated November 8, 1932, covering the process involving the use of compressed tablets in the canning industry. You were advised of the ownership of this patent and the position of the Scientific Tablet Company that you were guilty of contributory infringment if you sold compressed tablets for use in such a way that the canners would practice the invention of the patent referred to. This notice was dated March 21, 1933, and correspondence with you and your attorneys, Messrs. Stearns & Jones, ensued.

If you are now selling salt tablets with the intent and purpose that they shall be used to practice the invention of the above patent, it is our definite position that you are guilty of contributory infringement of the patent, and you are advised that I am instructed to take such steps as may be necessary to vindicate the rights of the Scientific Tablet Company under this patent. In addition, the canners who use dispensing machines furnished by Scientific Tablet Company under lease are under contract to use those machines only with tablets originating with the Scientific Tablet Company.

If you will advise me that you are selling these tablets to the canning industry and refuse to desist from so doing the matter can be brought to a quick issue.

Very truly yours,
(Signed) Lawrence C. Kingsland.
(Signed) Amanda P. Bragg,
Notary Public.

(Seal)
Nov. 30, 1939.

90 DEFENDANT'S EXHIBIT NO. 12.

The Lake Erie Canning Company

Sandusky, Ohio
August 18, 1937

Morton Salt Co.
208 W. Washington St.
Chicago, Illinois.

Gentlemen:

On July 12th, we gave an order to your Mr. John S. Jones, for

35 Cases 30 Grain Tablets
30 Cases 40 Grain Tablets
35 Cases 150 Grain Tablets

to be shipped about August 15th. Also one salting device, to arrive at the same time, on a rental basis. Up to the present time, we have heard nothing from you with reference to the salting machine. Mr. Jones stated that you were privileged to make these salt tablets.

We are, today, in receipt of a letter from the Scientific Tablet Company, dated August 16th, that went out to the trade—which reads as follows:

"It would be an infringement on the process Patents U. S. No. 1887073, Canadian Patent No. 328703 or British Patent No. 399322 to make use of compressed flavoring material Tablets in canning practices in accordance with these patents, where such tablets are not manufactured by the Scientific Tablet Company in the United States of America or its Licensee, Canadian Industries Limited, in the Dominion of Canada."

According to their letter, if we used tablets purchased from you we are subject to an infringement, against their process. Pelase do not make shipment of our order until this is definitely thrashed out.

We wish this to be definitely done as quickly as possible because our packing will start about September 1st.

Yours very truly,
The Lake Erie Canning Company
Geo. S. Wenger,
Sec. & Treas.

(Signed) Amanda P. Bragg,
Notary Public.

(Seal)

Nov. 30, 1939.

Filed Dec. 8, 1939.

109 And on, to wit, the 8th day of December, 1939, came the said Gerhart S. Suppiger and Charles M. Schofield, by their attorneys and filed in the Clerk's office of said Court their certain Affidavits in words and figures following, to wit:

110 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—245) * *

AFFIDAVIT OF GERHART S. SUPPIGER.

State of Missouri }
City of St. Louis } ss.

Gerhart S. Suppiger, being duly sworn, deposes and says as follows:

I am of legal age and a resident of Belleville, St. Clair County, Illinois. I am the President of The G. S. Suppiger Company, the plaintiff in the above-identified civil action, and have personal knowledge of the matters and facts set forth below.

The plaintiff, The G. S. Suppiger Company, or its predecessors, pioneered the salt tablet industry as applied to the canning industry and developed it to its present stature. The salt tablet today manufactured by the plaintiff for canning has a particular configuration which adapts it to function with salt tablet depositing machines manufactured by the plaintiff. The sides comprise a circular band and the ends are semispherical, the two diameters being substantially equal. Tablets of other substances are
111 flat at the ends, or nearly so. Salt tablets for therapeutic use and other uses are also flat, or substantially so, at the ends. Hence, the salt tablet used in

the canning industry is not a staple article. It is a special article pioneered and developed by the plaintiff, or its predecessors.

The depositing machines of the plaintiff require a salt tablet as aforesaid for continuous untroubled performance. Flat tablets, and the like, cause physical damage to the depositing machines. For the protection of the plaintiff's depositing machines and the plaintiff's business standing with users of the machines, it is essential that proper salt tablets be used in the machines.

The plaintiff has sold depositing machines constructed in accordance with my understanding of the patent here sued on for use other than for depositing salt tablets. One such machine is in operation at the plant of the Corn Products Refining Company at Argo, Illinois, where it is used to separate, pick up, and deposit gelantine-enclosed lemon oil capsules. Another such machine is in operation at the plant of the Corn Products Refining Company at Edgewater, New Jersey, where it is similarly used. These machines were sold outright to the Corn Products Refining Company. The plaintiff now has many calls for its depositing machines for use outside the salt tablet depositing field by companies desirous of purchasing the machines.

Gerhart S. Suppiger.

Subscribed and sworn to before me this 6th day of December, 1939. My Commission expires November 11, 1943.

N. B. Sumner,
Notary Public.

(Seal)

112 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—245) * *

AFFIDAVIT OF CHARLES M. SCHOFIELD.

State of Missouri }
City of St. Louis } ss.

Charles M. Schofield, being duly sworn, deposes and says as follows:

I am of legal age and a resident of the City of St. Louis, in the State of Missouri. I am the General Assistant to the Manager of The G. S. Suppiger Company, the plaintiff

in the above-identified civil action, and have personal knowledge of the matters and facts set forth below.

The plaintiff, The G. S. Suppiger Company, or its predecessors, pioneered the salt tablet industry as applied to the canning industry and developed it to its present stature. The salt table today manufactured by the plaintiff for canning has a particular configuration which adapts it to function with salt tablet depositing machines manufactured by the plaintiff. The sides comprise a circular band and the ends are semispherical, the two diameters being
113 substantially equal. Tablets of other substances are flat at the ends, or nearly so. Salt tablets for therapeutic use and other uses are also flat, or substantially so, at the ends. Hence, the salt tablet used in the canning industry is not a staple article. It is a special article pioneered and developed by the plaintiff, or its predecessors.

The depositing machines of the plaintiff require a salt tablet as aforesaid for continuous untroubled performance. Flat tablets, and the like, cause physical damage to the depositing machines. For the protection of the plaintiff's depositing machines and the plaintiff's business standing with users of the machines, it is essential that proper salt tablets be used in the machines.

The plaintiff has sold depositing machines constructed in accordance with my understanding of the patent here sued on for use other than for depositing salt tablets. One such machine is in operation at the plant of the Corn Products Refining Company at Argo, Illinois, where it is used to separate, pick up, and deposit gelatine-enclosed lemon oil capsules. Another such machine is in operation at the plant of the Corn Products Refining Company at Edgewater, New Jersey, where it is similarly used. These machines were sold outright to the Corn Products Refining Company. The plaintiff now has many calls for its depositing machines for use outside the salt tablet depositing field by companies desirous of purchasing the machines.

C. M. Schofield.

Subscribed and sworn to before me this 6th day of December, 1939. My Commission expires November 11, 1943.

N. B. Sumner,
Notary Public.

(Seal)

80 And on, to wit, the 28th day of December, 1939, came the Defendant by its attorneys and filed in the Clerk's office of said Court its certain Motion for Summary Judgment in words and figures following, to wit: Filed Dec. 28, 1939.

81 IN THE UNITED STATES DISTRICT COURT.
• • (Caption—245) • •

MOTION FOR SUMMARY JUDGMENT.

Now comes Morton Salt Company, the defendant, by its solicitor, and, under Rule 56 of the Federal Rules of Civil Procedure, moves the Court for a summary judgment in its favor dismissing the complaint at plaintiff's costs.

This motion is based upon the pleadings and specifically paragraph 4a of defendant's answer as amended; upon the depositions of G. S. Suppiger, president of the plaintiff, and C. M. Schofield, general assistant to Mr. Suppiger, taken on behalf of defendant and duly filed with the clerk of this Court on October 18, 1939, together with the Exhibits offered in evidence in connection with said depositions; and upon the attached affidavit of Daniel Peterkin, Jr., Vice President of defendant, Morton Salt Company.

In addition, letters patent 1,887,073, 1,824,695, 1,884,365 and 1,945,337 which, with plaintiff's letters patent in suit 2,060,645 attached to the complaint, are referred to in the aforesaid depositions and named in certain of the Exhibits offered in connection therewith, may be used at the hearing.

Clarence E. Mehlhope,
Solicitor for Morton Salt Company, Defendant.

Dated:
Chicago, Illinois, December 1st, 1939.

82 And on, to wit, the 28th day of December, 1939, came the Defendant by its attorneys and filed in the Clerk's office of said Court its certain Affidavit of Daniel Peterkin, Jr., in words and figures following, to wit:

Filed Dec. 28, 1939. 83 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—245) * *

AFFIDAVIT OF DANIEL PETERKIN, JR.

State of Illinois }
County of Cook } ss.

Daniel Peterkin, Jr., being duly sworn, deposes and says as follows:

I am of legal age and a resident of Chicago, in the County of Cook and State of Illinois. I am the Vice President of Morton Salt Company, the defendant named in the above identified civil action, and have knowledge of the matters and facts hereinafter related.

The defendant, Morton Salt Company, is and long has been in the business of mining, processing, distributing and selling bulk or loose salt for commercial canning and for domestic use. In commercial canning of vegetables such as tomatoes and the like, the salt has generally been measured and deposited either by spoon or other measuring device to add to each can a uniform amount of salt. Measurements may not be uniform and the salt content of different cans may vary. To cure this difficulty, compressed salt tablets of predetermined measured content have for a long time prior to the filing of the complaint in this case, been offered and sold to the canning industry by the plaintiff
84 and its predecessor, Scientific Tablet Company.

Defendant, as other salt companies, has for years manufactured and sold compressed salt blocks for cattle used by farmers and cattle raisers. Finding that there was a market for salt tablets of various predetermined weights for use by the canning industry, and finding on investigation that salt tablets of the kind were not patented and were free for manufacture and sale by anyone, defendant, Morton Salt Company, bought machinery for making compressed salt tablets of the kind. It then manufactured the tablets and, through its agents, offered and sold the same to the canning industry. In addition, the defendant developed a depositing machine for depositing the salt tablets in the cans, and later a second type of depositing machine,—the second machine being the type herein charged to infringe the patent in suit. These machines were leased to the canners on the payment of a small annual rental.

Along in August, 1937, Morton Salt Company received many complaints from its customers among the canners to the effect that they were being threatened with suit for infringement of patents by Scientific Tablet Company. I attach hereto a letter dated August 3, 1937, from Marshall Canning Company of Marshalltown, Iowa, advising Morton Salt Company of such threat, said letter being identified as Defendant's Exhibit 9. Thereupon the defendant, Morton Salt Company, wrote the Scientific Tablet Company under date of August 4, 1937, as per the attached carbon copy taken from our files and identified as Defendant's Exhibit 10. Said letter was answered by Lawrence C. Kingsland, attorney for the Scientific Tablet Company, under date of August 9, 1937, by the letter attached hereto and identified as Defendant's Exhibit 11.

Thereafter Morton Salt Company received a letter dated August 18, 1937, from the Lake Erie Canning Company of Sandusky, Ohio, which is attached hereto and marked Defendant's Exhibit 12.

85 In September, 1937, Scientific Tablet Company, predecessor of the plaintiff, The G. S. Suppiger Company, brought suit in the United States District Court, Northern District of Ohio, at Toledo, Ohio, against John William Ossege, doing business as Superior Canning Company, in Equity 1600, charging infringement of its patent No. 1,887,073, entitled "Method of Flavoring in Canning, Preserving and Bottling Operations".

The salt tablets used by said Ossege in the canning process carried on by him and charged to be an infringement of said patent were sold to him by defendant, Morton Salt Company, which assumed the defense of its said customer. Said case was tried February 23 and 24, 1939, and thereafter briefed by counsel for the parties. As yet no decision has been handed down by the Court in that case.

And further deponent saith not.

Daniel Peterkin, Jr.

Subscribed and sworn to before me this 30th day of November, 1939.

Amanda P. Bragg,
Notary Public.

(Seal)

Filed Jan. 31, 1940.

114 And on, to wit, the 31st day of January, 1940, there was filed in the Clerk's office of said Court a certain Memorandum of Judge Holly in words and figures following, to wit:

115 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—245) * *

MEMORANDUM.

Defendant has moved for a summary judgment dismissing plaintiff's complaint. I am of the opinion that defendant's motion should be sustained. *American Lecithin Company* v. *The Warfield Company*, 105 F. (2d) 207.

Plaintiff relies largely upon *Federal Trade Commission* v. *Sinclair Refining Co.*, 261 U. S. 463, 474, but that case is clearly distinguishable from the case at bar. *International Machine Corp.* v. *U. S.* 298 U. S. 131.

Plaintiff also contends that defendant is not entitled to judgment because plaintiff has not obtained and cannot obtain a *complete* monopoly on the sale of salt tablets through the restrictions imposed on the use of the patented machines. But Section 3 of the Clayton Act condemns agreements which result in a limited monopoly.

Plaintiff attempts to defend the restrictions placed upon the use of its patented machine by urging that it requires "salt tablets of a particular configuration for continuous untroubled performance." But it seems perfectly clear from the record that any salt manufacturer could
116 easily, and defendant does, manufacture tablets of the particular form required for the successful operation of the machine. All that is necessary is for plaintiff to notify the users of the machine that it may be successfully operated with tablets of that form.

William H. Holly,
Judge.

117 And on, to wit, the 15th day of February, 1940, came the Defendant by its attorneys and filed in the Clerk's office of said Court its certain Motion in words and figures following, to wit:

118 IN THE UNITED STATES DISTRICT COURT. Filed Feb. 15, 1939.
* * (Caption—245) * *

MOTION.

Now comes defendant, Morton Salt Company, by its counsel, and moves the Court:

(a) To approve the attached Findings of Fact and a Conclusion of Law, which, with his memorandum entered January 31, 1940, we shall ask him to enter as his Findings of Fact and Conclusions of Law to be made a part of the record.

(b) To enter the attached Final Decree dismissing the complaint in the above entitled Civil Action.

By Clarence E. Mehlhope,
Counsel for Defendant.

Chicago, Illinois, February 5, 1940.

119 And on, to wit, the 20th day of May, 1940, Nunc pro tunc as of February 15th, A. D. 1940 came the Defendant by its attorneys and filed in the Clerk's office of said Court its certain Findings of Fact and Conclusions of Law in words and figures following, to wit: Filed May 20, 194 (Nunc pro t as of Feb. 1 1940).

120 IN THE UNITED STATES DISTRICT COURT.
* * (Caption—245) * *

FINDINGS OF FACT.

1. The complaint is based upon alleged infringement of patent No. 2,060,645 for "Tablet Depositing Machine". Defendant's Amended Answer presents the defense of monopoly or attempted monopoly.

2. Plaintiff and its predecessor, Scientific Tablet Company, now dissolved, since 1927 have been in the business of manufacturing and selling salt tablets of predetermined content for use in the canning industry in lieu of loose salt or brine. They also manufactured or had manufactured for them machines under the patent in suit and also other machines under patents owned by them for depositing salt tablets. They did not sell but leased said machines made under the patent in suit and their other

patents to commercial canners of vegetables, as tomatoes and the like, in the many states wherein such canners are located. The leases were in writing and included a license to use the patented machine, upon the condition and agreement by the lessee that plaintiff's and its predecessor's salt tablets be used exclusively in said patented, leased machines.

3. Plaintiff's salt tablets have a particular configuration which is required for use in plaintiff's depositing machines for continuous, untroubled use. But plaintiff's salt tablets are not patented. And anyone may lawfully make and sell them.

121 4. Plaintiff's leases also include a process patent No. 1,887,073 purporting to cover the use of salt tablets of the kind in the canning of tomatoes and other vegetables, whether the tablets are deposited by machine or by hand. A license under this patent is included in the lease.

5. The manufacture and sale of the salt tablets is and was the main business of plaintiff's predecessor and of plaintiff after it acquired that business in June, 1928, and which it has since carried on as a subsidiary company. The end and aim of the business was and is the sale of the salt tablets in which its profits lie. The patented depositing machine of the patent in suit and of other patents is a mere secondary adjunct.

6. The defendant is in the business of mining, processing and selling salt for commercial canning and for other purposes. It also makes and sells salt tablets such as those made and sold by planitiff for use in the canning industry. It also makes and leases salt tablet depositing machines to canners and in particular the salt depositing machines charged to infringe the patent in suit. Defendant's salt tablet depositing machine is not patented.

7. Plaintiff, after the patent in suit and other patents on the salt depositing machines named in their leases were issued, in 1937 and 1938, circularized the canning industry generally throughout many states, notifying them that their salt tablet depositing machines were individually covered by applications granted or pending; that said machines were leased under a signed agreement providing for their use with tablets manufactured exclusively by plaintiff's predecessor; and that it would be an infringement on their process patent No. 1,887,073 to make use of tablets in canning practices in accordance with

these patents, where such tablets were not manufactured by plaintiff's predecessor. And that to buy such tablets from others would involve them in a suit for infringement,—one such case being then (1938) said to be 122 in Federal Court.

8. In August, 1937, defendant was notified that by sale of its salt tablets to users of the process of plaintiff's patent No. 1,887,073, it became a contributory infringer of that patent and that canners using said depositing machines of plaintiff's predecessor were under contract to use them only with tablets originating it it.

9. Thereafter plaintiff's predecessor brought suit in the United States District Court at Toledo, Ohio, under its process patent No. 1,887,073 against a canner in Toledo who bought salt tablets from defendant and deposited them by hand in his canning business. Defendant assumed in that case the defense of its customer.

10. According to plaintiff's estimate, two hundred (200) machines of the type disclosed in the patent in suit were in use by lessees under one or the other of plaintiff's written lease forms No. 1 or No. 2, at the time of the depositions, namely, September 26, 1939.

11. There is no genuine issue as to any material fact involved in the case.

CONCLUSION OF LAW.

1. The plaintiff has attempted by the manner in which it carried on its business under the patent in suit to extend its patent monopoly beyond the boundaries described in the claims of said patent to cover unpatented products not included therein, Plaintiff, by its patent in suit, has attempted to establish a limited monopoly in the sale of unpatented salt tablets in the canning industry. This is condemned under the law.

123 And on, to wit, the 16th day of April, 1940, came the Plaintiff by Its attorneys and filed in the Clerk's office of said Court Its certain Proposed Findings of Fact and Conclusions of Law in words and figure following, to wit:

Filed Apr. 16, 1940. 124 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—245) * *

FINDINGS OF FACT.

1. The complaint is based upon alleged infringement of patent No. 2,060,645 for "Tablet Depositing Machine." Defendant's Amended Answer presents the defense of monopoly or attempted monopoly.

2. Plaintiff and its predecessor, Scientific Tablet Company, now dissolved, since 1927 have been in the business of manufacturing and selling salt tablets of predetermined content for use in the canning industry in lieu of loose salt or brine. They also manufactured or had manufactured for them machines under the patent in suit, machines under other patents owned by them for depositing salt tablets, and unpatented machines. They did not sell but leased said machines to commercial canners of vegetables, as tomatoes, and the like, in the many states wherein such canners are located. The leases were in writing and included a clause that plaintiff's and its predecessor's salt tablets be used exclusively in said machines.

125 Recently the plaintiff has sold depositing machines constructed under the patent in suit for depositing other articles than salt tablets.

3. Plaintiff's salt tablets have a particular configuration which is required for use in plaintiff's depositing machines for continuous untroubled use. But plaintiff's salt tablets are not patented. Anyone may lawfully make and sell them.

4. The manufacture and sale of the salt tablets was the main business of plaintiff's predecessor. The plaintiff acquired that business in June, 1938, which it has since carried on as a subsidiary company. The end and aim of the business was and is the sale of the salt tablets in which its profits lie.

5. The defendant is in the business of mining, processing and selling salt for commercial canning and for other purposes. It also makes and sells salt tablets such as those made and sold by plaintiff for use in the canning industry. It also makes and leases salt tablet depositing machines to canners, and in particular the salt depositing machines charged to infringe the patent in suit, upon

which it places a tag stating only tablets sold by the defendant are to be deposited thereby. Defendant's salt tablet depositing machine is not patented.

6. There is no genuine issue as to any material fact involved in the matters submitted under the Motion for Summary Judgment.

CONCLUSIONS OF LAW.

1. The plaintiff, by its patent in suit, has unlawfully attempted to establish a limited monopoly in the sale of unpatented salt tablets in the canning industry.

126 Service of the foregoing Findings of Fact and Conclusion of Law made by depositing a copy thereof in the mail this 10th day of February, 1940.

Estill E. Ezell.

St. Louis, Missouri, February 10, 1940.

127 And on, to wit, the 23rd day of February, 1940, there was filed in the Clerk's office of said Court a certain Findings of Fact and Conclusions of Law in words and figures following, to wit: Filed Feb. 23, 1940.

128 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—245) * *

The Court makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT.

1. The complaint is based upon alleged infringement of patent No. 2,060,645 for "Tablet Depositing Machine". Defendant's Amended Answer presents the defense of monopoly or attempted monopoly.

2. Plaintiff and its predecessor, Scientific Tablet Company, now dissolved, since 1927 have been in the business of manufacturing and selling salt tablets of predetermined content for use in the canning industry in lieu of loose salt or brine. They also manufactured or had manufactured for them machines under the patent in suit and also other machines under patents owned by them for depositing salt tablets. They did not sell but leased said ma-

chines made under the patent in suit and their other patents to commercial canners of vegetables, as tomatoes and the like, in the many states wherein such canners are located. The leases were in writing and included a license to use the patented machine, upon the condition and agreement by the lessee that plaintiff's and its predecessor's salt tablets be used exclusively in said patented, leased machines.

3. Plaintiff's salt tablets have a particular configuration which is required for use in plaintiff's depositing machines for continuous, untroubled use. But plain-
129 tiff's salt tablets are not patented. And anyone may lawfully make and sell them.

4. The manufacture and sale of the salt tablets is and was the main business of plaintiff's predecessor and of plaintiff after it acquired that business in June, 1928, and which it has since carried on as a subsidiary company. The end and aim of the business was and is the sale of the salt tablets in which its profits lie. The patented depositing machine of the patent in suit and of other patents is a mere secondary adjunct.

5. The defendant is in the business of mining, processing and selling salt for commercial canning and for other purposes. It also makes and sells salt tablets such as those made and sold by plaintiff for use in the canning industry. It also makes and leases salt tablet depositing machines to canners and in particular the salt depositing machines charged to infringe the patent in suit. Defendant's salt tablet depositing machine is not patented.

6. According to plaintiff's estimate, two hundred (200) machines of the type disclosed in the patent in suit were in use by lessees under one or the other of plaintiff's written lease forms No. 1 or No. 2, at the time of the depositions, namely, September 26, 1939.

7. There is no genuine issue as to any material fact involved in the case.

130 CONCLUSIONS OF LAW.

1. The plaintiff has attempted by the manner in which it carried on its business under the patent in suit to extend its patent monopoly beyond the boundaries described in the claims of said patent to cover unpatented products not included therein. Plaintiff, by its patent in suit, has

attempted to establish a limited monopoly in the sale of unpatented salt tablets in the canning industry. This is condemned under the law.

2. Defendant has moved for a summary judgment dismissing plaintiff's complaint. I am of the opinion that defendant's motion should be sustained. *American Lecithin Company* v. *The Warfield Company,* 105 F. (2d) 207.

3. Plaintiff relies largely upon *Federal Trade Commission* v. *Sinclair Refining Co.,* 261 U. S. 463, 474, but that case is clearly distinguishable from the case at bar. *International Machine Corp.* v. *U. S.,* 298 U. S. 131.

4. Plaintiff also contends that defendant is not entitled to judgment because plaintiff has not obtained and cannot obtain a complete monopoly on the sale of salt tablets through the restrictions imposed on the use of the patented machines. But Section 3 of the Clayton Act condemns agreements which result in a limited monopoly.

5. Plaintiff attempts to defend the restrictions placed upon the use of its patented machine by urging that it requires "salt tablets of a particular configuration for continuous untroubled performance." But it seems perfectly clear from the record that any salt manufacturer could easily, and defendant does, manufacture tablets of the particular form required for the successful operation of the machine. All that is necessary is for plaintiff to notify the users of the machine that it may be successfully operated with tablets of that form.

William H. Holly,
U. S. District Judge.

Dated February 23rd 1940.

131 And afterwards, to wit, on the 23rd day of February, 1940, being one of the days of the regular February term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable William H. Holly, District Judge, appears the following entry, to wit:

Entered Feb. 23, 1940.

132 IN THE UNITED STATES DISTRICT COURT.

• • (Caption—245) • •

FINAL DECREE.

This cause coming on to be heard on defendant's Motion under Rule 56 of the Federal Rules of Civil Procedure for Summary Judgment dismissing plaintiff's complaint, was argued by counsel; thereupon, upon consideration thereof, it was

Ordered, Adjudged and Decreed that the Complaint be dismissed for want of equity at plaintiff's costs.

William H. Holly,
Judge.

Entered February 23rd, 1940.

Filed Apr. 26, 1940.

133 And on, to wit, the 26th day of April, 1940, came the Plaintiff by its attorneys and filed in the Clerk's office of said Court its certain Notice of Appeal in words and figures following, to wit:

134 IN THE UNITED STATES DISTRICT COURT

For the Northern District of Illinois,

Eastern Division.

The G. S. Suppiger Company, a corporation of Delaware,
Plaintiff,
vs.
Morton Salt Company, a corporation of Illinois,
Defendant.
} Civil Action No. 245.

NOTICE OF APPEAL.

Notice is hereby given that the plaintiff herein, The G. S. Suppiger Company, a corporation of Delaware, hereby appeals to the Circuit Court of Appeals of the

Seventh Circuit from the final decree entered in this action on February 23, 1940.

Robert H. Wendt,
Solicitor for Plaintiff,
135 S. La Salle Street,
Chicago, Illinois.
Lawrence C. Kingsland,
Estill E. Ezell,
Attorneys for Plaintiff.

Edmund C. Rogers,
Of Counsel.

St. Louis, Missouri, April 19, 1940.

135 And on, to wit, the 26th day of April, 1940, came the Plaintiff by its attorneys and filed in the Clerk's office of said Court its certain Statement of Errors in words and figures following, to wit: Filed Apr. 26, 1940.

136 IN THE UNITED STATES DISTRICT COURT.
* * (Caption—245) * *

STATEMENT OF ERRORS.

Comes now the plaintiff and states and shows that the District Court, in making its Findings of Fact and Conclusions of Law filed February 23, 1940, erred in holding:

1. That there is no genuine issue as to any material fact involved in the case (Finding No. 7).
2. That the plaintiff has attempted, by the manner in which it carried on its business under the patent in suit, to extend its patent monopoly beyond the boundaries described in the claims of said patent to cover unpatented products not included therein; that plaintiff, by its patent in suit, has attempted to establish a limited monopoly in the sale of unpatented salt tablets in the canning industry (Conclusion No. 1).
3. That the defendant's motion should be sustained on the authority of the *American Lecithin Company* v. *The Warfield Company,* 105 F. (2d) 207 (Conclusion No. 2).

137 4. That the case of *Federal Trade Commission* v. *Sinclair Refining Company,* 261 U. S. 463, 67 L. ed. 746,

is clearly distinguishable from the present case. (Conclusion No. 3).

5. That Section 3 of the Clayton Act condemns an agreement of the nature of that entered into by the plaintiff with its lessees where there is no practical monopoly of the unpatented salt tablets (Conclusion No. 4).

6. That any salt manufacturer could easily manufacture tablets of the particular form required for the successful operation of the plaintiff's machines, and that the plaintiff would need but notify its lessees that machines could be successfully operated with tablets of that from (Conclusion No. 5).

The plaintiff further states and shows that the District Court erred:

1. In failing to find that the plaintiff has sold depositing machines constructed under the patent in suit for depositing other articles than salt tablets.

2. In failing to overrule the defendant's motion for summary judgment and setting the case for hearing upon the merits, for the plaintiff, by its leases, has not violated Section 3 of the Clayton Act, or any other act appertaining to monopoly, nor has it transgressed the prohibition of the case of *American Lecithin Company* v. *The Warfield Company*, 105 F. (2d) 207.

Robert H. Wendt,
Solicitor for Plaintiff,
135 S. La Salle Street,
Chicago, Illinois.
Lawrence C. Kingsland,
Estill E. Ezell,
Attorneys for Plaintiff.

Edmund C. Rogers,
Of Counsel.

St. Louis, Missouri, April 19, 1940.

138 And on, to wit, the 26th day of April, 1940, came the Plaintiff by its attorneys and filed in the Clerk's office of said Court certain Designation of Record on Appeal in words and figures following, to wit:

139 IN THE UNITED STATES DISTRICT COURT. Filed Apr. 26, 1940.

* * (Caption—245) * *

DESIGNATION OF RECORD ON APPEAL.

To the Clerk of the Above-Entitled Court:

You are hereby requested to make a transcript of the record to be filed in the United States Circuit Court of Appeals for the Seventh Circuit, pursuant to the appeal allowed in the above-entitled cause, and to include in such transcript the following:

1. Bill of complaint, including attached United States Patent No. 2,060,645.
2. Defendant's answer to complaint.
3. Motion to amend the answer.
4. Amendment to the answer.
5. Memorandum granting leave to amend the answer.
6. Depositions of G. S. Suppiger and C. M. Schofield taken at St. Louis, Missouri, September 26, 1939.
7. Defendant's Exhibits Nos. 1, 2, 3, 5 and 7; and the addressee and "subject" of Defendant's Exhibits 4 and 8 with the statement "same as Defendant's Exhibit 3".
8. Motion for summary judgment.

140 9. Affidavit of Daniel Peterkin, Jr.

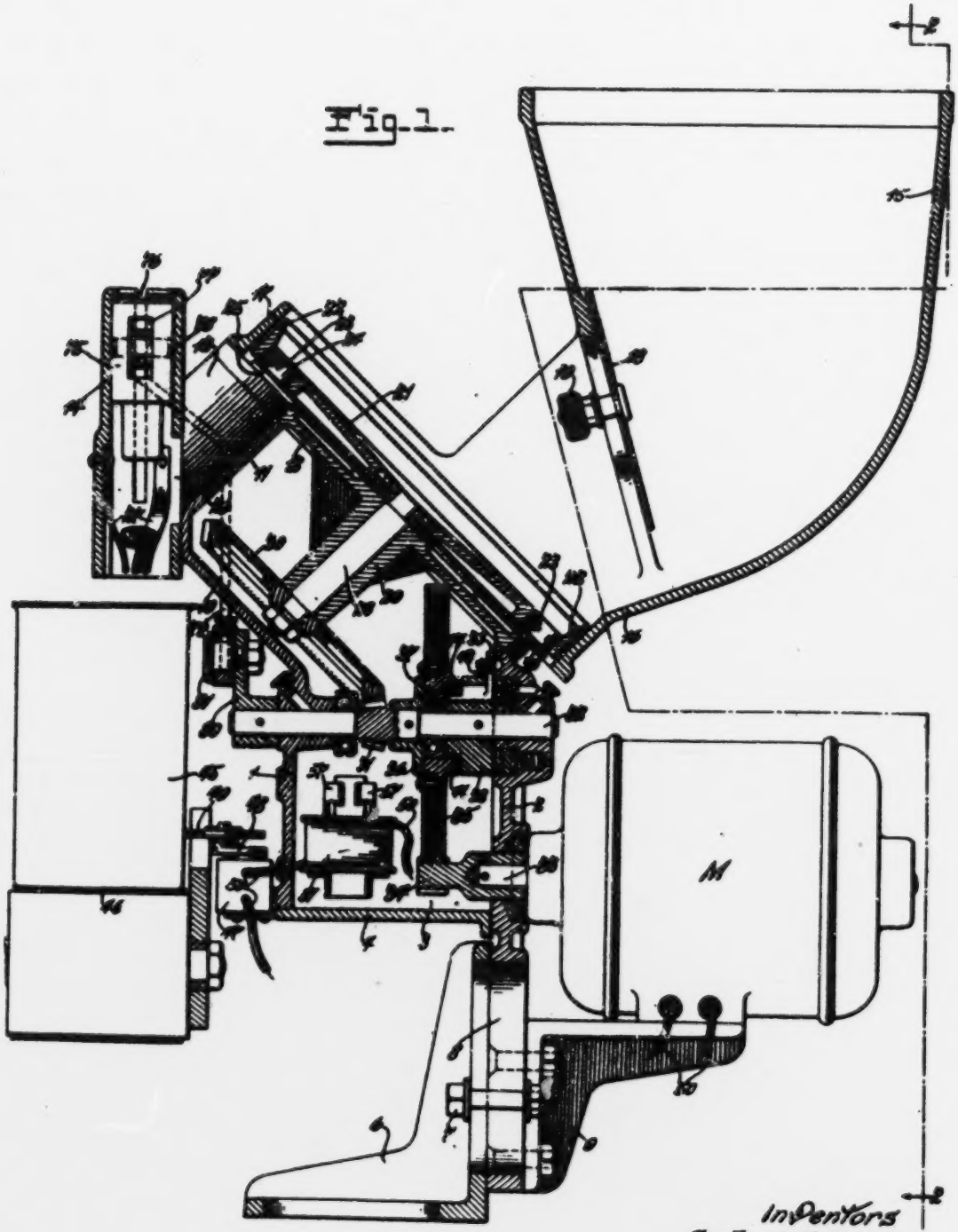
10. Defendant's Exhibits Nos. 9, 10, 11, and 12.
11. United States Patents Nos, 1,887,073, 1,824,695, 1,884,365, and 1,945,337.
12. Affidavit of Gerhart S. Suppiger.
13. Affidavit of Charles M. Schofield.
14. Memorandum decision dismissing the complaint.
15. Defendant's motion to approve proposed findings of fact and a conclusion of law and a final decree.
16. Defendant's proposed findings of fact and conclusion of law (numbered edition).
17. Plaintiff's proposed findings of fact and conclusion of law.
18. Court's findings of fact and conclusions of law entered February 23, 1940.
19. Final decree entered February 23, 1940.
20. Notice of appeal.
21. Statement of errors.
22. This designation of the record on appeal.

In accordance with the provisions of Section E of Rule 75, it is requested that the formal parts of the pleading, depositions, documents and exhibits be omitted, the formal parts of the pleadings including all captions after the bill of complaint. It is further requested that the Defendant's Exhibits Nos. 1, 2, 3, 5, 7, 9, 10, 11, and 12 be printed into the record rather than photostated. Copies of the Defendant's Exhibits 1, 2, 3, 5, and 7 will be found
141 attached to the depositions of Suppiger and Schofield and copies of Defendant's Exhibits 9, 10, 11 and 12 will be found attached to the defendant's motion for summary judgment. It is requested that copies of the above enumerated patents be secured from the United States Patent Office for the record.

Robert H. Wendt,
Solicitor for Plaintiff,
135 S. La Salle Street,
Chicago, Illinois.
Lawrence C. Kingsland,
Estill E. Ezell,
Attorneys for Plaintiff.

Edmund C. Rogers,
Of Counsel.
St. Louis, Missouri.

Fig. 1.



Inventors
Gerhart S. Suppiger
Clyde Alexander
John H. Schreiber
by Kenyon & Kenyon
Their Attorneys.

Fig. 2.

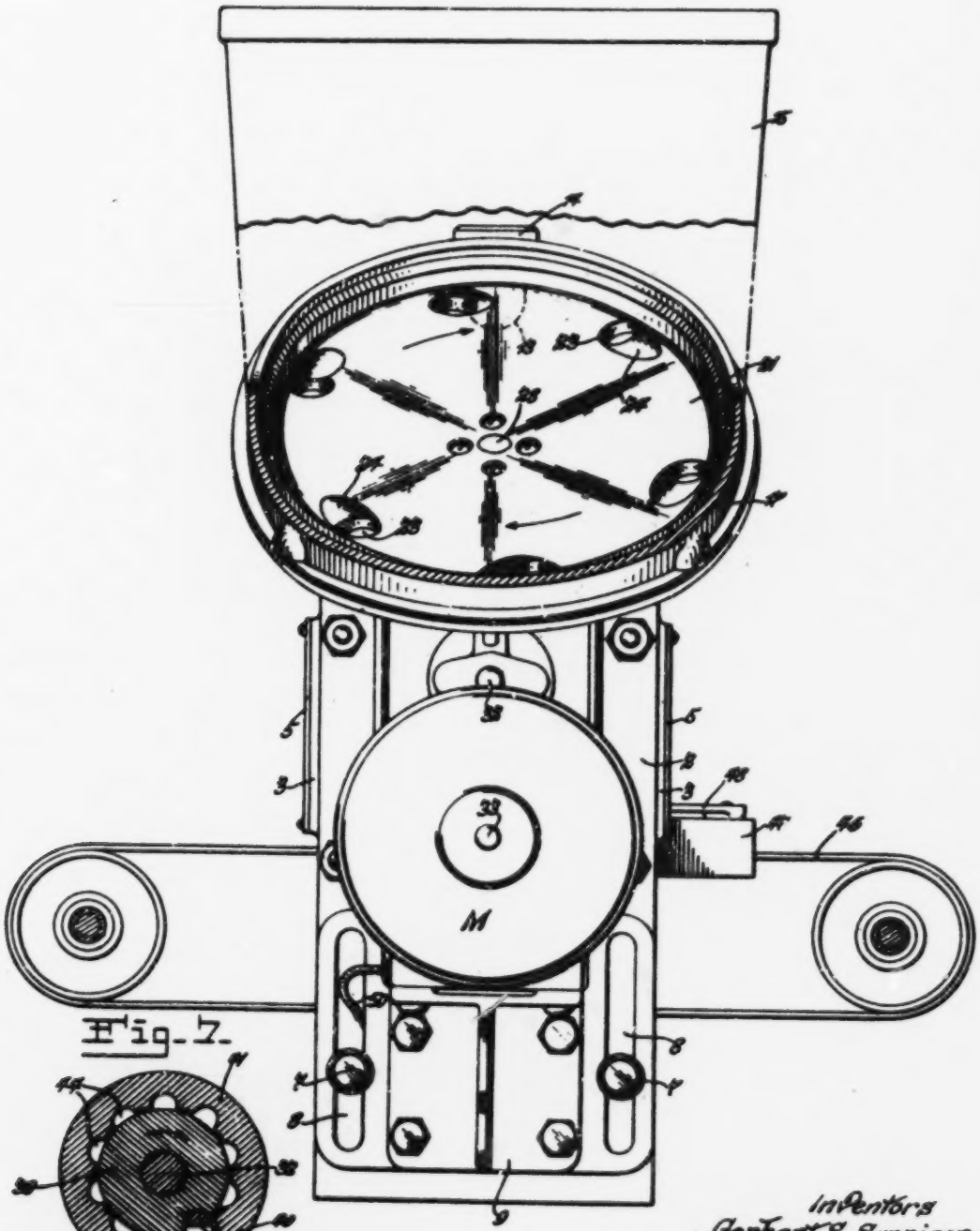
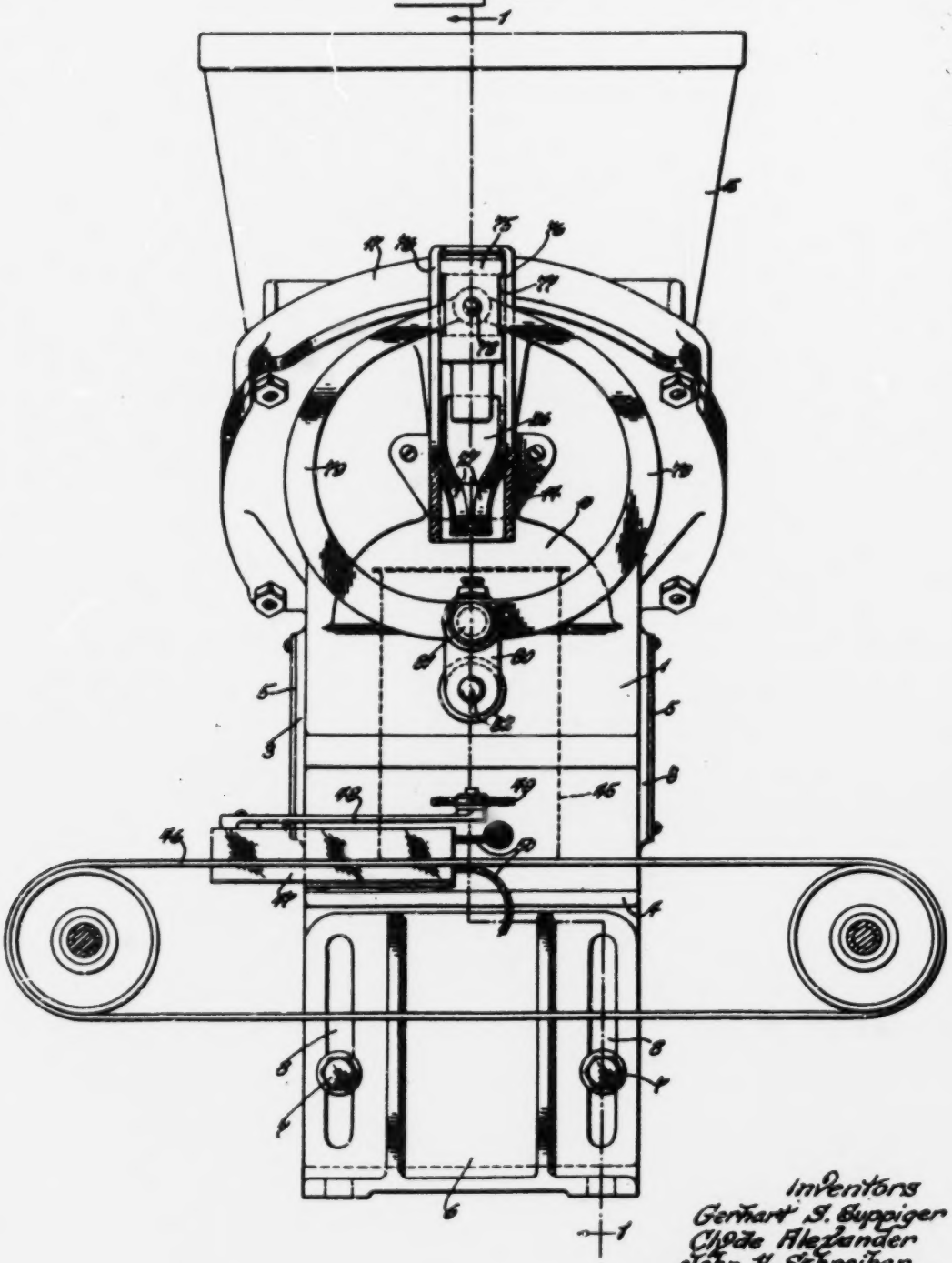


Fig. 7.

Inventors
Gerhart S. Seppiger
Clyde Alexander
John H. Schreiber
by Kipper & Kingsland
Their Attorneys.

Fig-3-



Inventors
Gerhart S. Guppiger
Clyde Alexander
John H. Schreiber
by Rappey & Olmsland
their Attorneys.

Fig. 4.

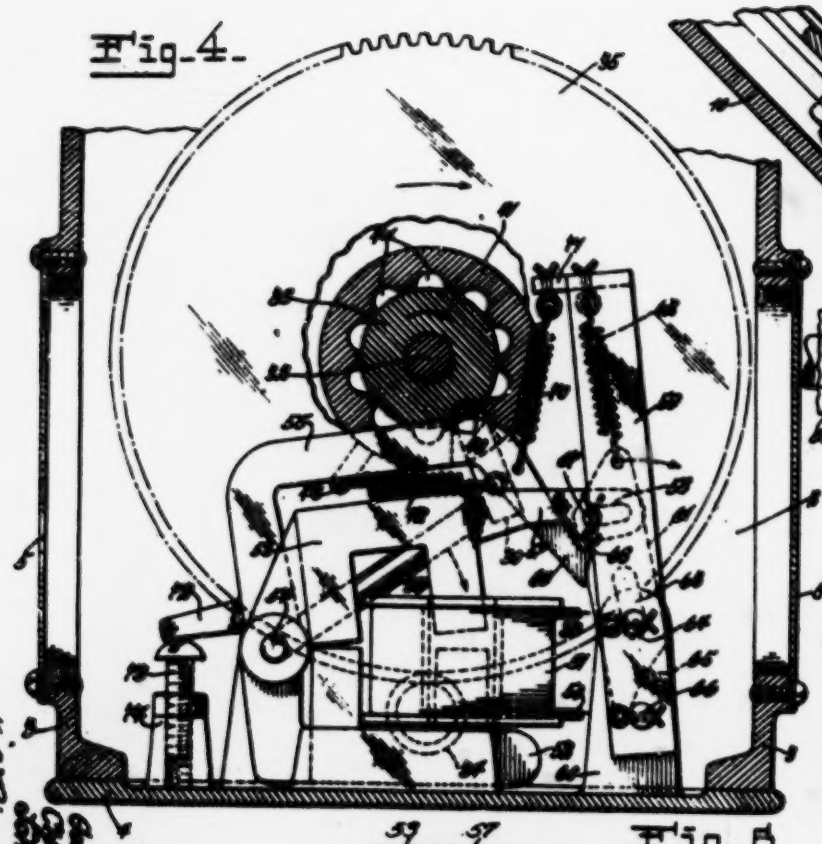


Fig. 5.

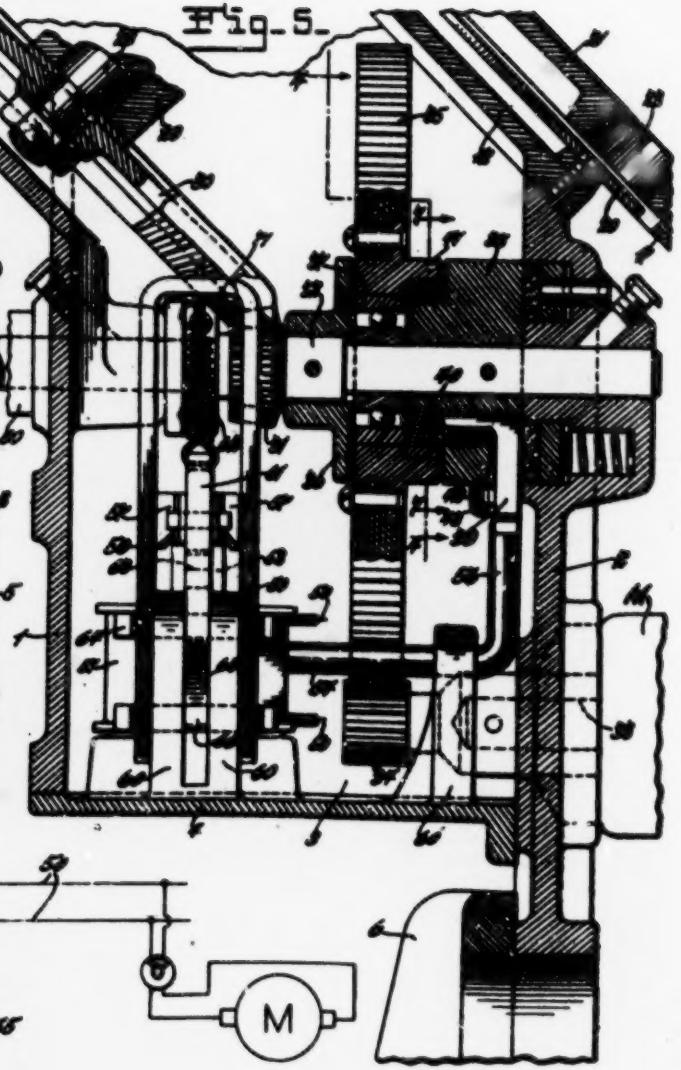
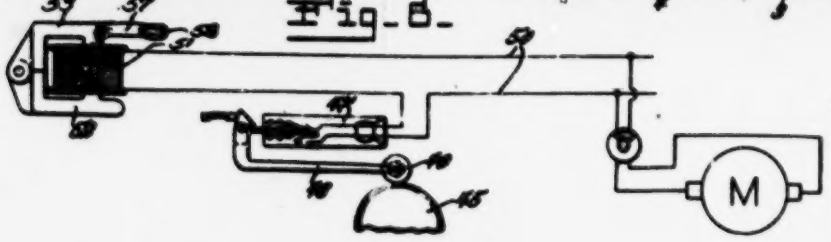


Fig. 6.



In Vertretung
Dr. Ing. Alexander
Dr. Ing. H. Böhmer
Ing.
Patent-Anwälte

Gerhart S. Seppiger and Clyde Alexander, Belleville, Ill., and John H. Schreiber, St. Louis, Mo., assignors to Scientific Tablet Co., Belleville, Ill., a corporation of Illinois

Application June 12, 1933, Serial No. 675,734

11 Claims. (Cl. 226—8)

This invention relates to improvements in tablet depositing machines; and consists in the novel construction hereinafter disclosed.

An object of the invention is to provide a machine to separately feed tablets from a supply contained in a hopper at timed intervals to deposit the tablets in containers traversing the delivery point, which machine includes an improved means for separating the tablets one at a time from the bulk of tablets contained in the hopper, and means for depositing the separated tablets in a retaining device from which they are positively expelled by an actuator into containers passing below the delivery device.

Another object of the invention is to equip a machine of this class with control mechanism actuated by the several containers into which the tablets are to be deposited, whereby the tablets will be discharged from the machine in synchronism with the position and movement of the containers fed below the machine by any suitable form of conveyor device.

Another object of the invention is to improve and simplify the mechanism for separating individual tablets from the bulk contained in the hopper feed device.

Additional advantages of the construction will be apparent from the following detail description taken in connection with the accompanying drawings, in which—

Fig. 1 is a vertical section taken substantially on the line 1—1 of Fig. 3.

Fig. 2 is a rear elevation partially in section following the line 2—2 of Fig. 1.

Fig. 3 is a front elevation.

Fig. 4 is a transverse section through the machine substantially on the line 4—4 of Fig. 5.

Fig. 5 is a view in longitudinal section of the operating mechanism incorporated in the machine.

Fig. 6 is a diagram illustrating the electrical control system.

Fig. 7 is a section on the line 7—7 of Fig. 5.

In the embodiment of the invention illustrated in the drawings, the machine is shown as including a housing comprising a front wall 1, a back wall 2 and side walls 3 supported in connection with a removable base plate 4. The side walls have central openings closed by plates 5 so that access to the interior of the housing may be obtained. The back wall 2 is extended downwardly from the base plate and is provided with a bracket 6 adjustably attached to the extension of the back plate 2 by bolts 7 extending through slots 8 in the back plate. A bracket 9 is removably bolted to the back plate and serves as a support for the operating motor M of the machine. The casting that forms the housing is extended upwardly to provide a forwardly and upwardly inclined housing which includes a bottom wall 10, a generally circular side wall 11 and a top wall 12. The wall 11 at the front part of the machine includes a cylindrical chute 13 that extends obliquely downwardly and forwardly, the lower end of said chute 13 connecting with a vertically disposed cylindrical chamber 14.

The feed hopper includes a generally inverted conical chamber 15 having an open top. The bottom of the hopper is extended to form a semi-cylindrical wall 16 which is formed integral with a flanged annular base 17. At the throat of the chamber 15 is a sliding plate 18 carried by an adjustable thumb screw 19 mounted in a slot in the front wall of the hopper. By vertically adjusting the plate 18 the throat of the hopper may be contracted or protracted to adjust the delivery of the bulk of tablets of different sizes. The base 17 of the hopper construction is carried by the wall 12. The diameter of the base 17 is slightly in excess of the diameter of the wall 12 so that the base 17 overhangs the wall, leaving an open space beyond the periphery of the wall 12. A spacing ring 20 is interposed between the base 17 of the hopper construction and the wall 12. Within the base 17 of the hopper construction there is mounted a circular plate 21 having a vertical flange 22 at its periphery. The upper surface of the plate 21 is formed with a slight concavity so that the rim of the plate is somewhat elevated with respect to the central portion thereof. Adjacent to the periphery of the plate 21 is a circular series of spaced openings 23 the advanced edges of which, as the plate rotates, are formed with a concavity 24 in the upper surface of the plate, which concavity assists in directing the tablets into the openings 23 and also prevents the locking of more than one tablet at a time within the openings.

It will be noted by reference to Fig. 1 that the ring 20 is positioned directly below the circular series of openings 23 and in relatively close adjustment to the lower edge of the openings. The ring 20 is continuous except for that portion of the plate that lies over the upper end of the chute 13, at which point there is an open space 25 in the ring 20. Therefore, when an opening 23 registers with the cut-out portion in the ring 20, the tablet will fall by gravity into the chute 13 and thence through the opening 26 in the wall

of the member 14, where it is caught and held by nested spring arms 27.

In operating the feeding mechanism for the tablets, the plate 21 is intermittently revolved. The plate 21 is axially mounted on a shaft 28 revolubly supported in a bearing 29 that extends downwardly from the underface of the wall 12. The shaft 28 carries at its lower end a beveled gear 30. This beveld gear 30 is driven by a beveled pinion 31 carried on a shaft 32 supported in the lower housing of the machine in which it is journalled for rotation. The shaft 32 is intermittently driven from the motor shaft 33 which is constantly rotating. The motor shaft 33 carries a pinion 34 that meshes with a gear 35. The gear 35 has a hub 36 which in turn is carried by the outer ring of an anti-friction bearing 37, either of the ball-bearing or roller-bearing type. Thus the gear 35 constantly rotates its hub during the operation of the machine. The shaft 32 is intermittently connected with the gear 35 by a clutch device. This clutch device includes a collar 38, which is fast with the shaft 32. The collar carries an angular arm, said arm having one leg 39 thereof extending outwardly from the periphery of the collar and the opposite leg 40 extending inwardly parallel with the axis of the collar. The inner end of said leg 40 of the arm has a semi-cylindrical extremity that lies within an overhanging flange 41 on the hub 36 of the gear 35. The outwardly extending leg 39 of the arm has a contraction spring 42 connected therewith at one end, said spring 42 connecting at the opposite end with a pin 43 carried by the collar 38. The normal tendency of the spring 42 is to rock the arm so that the edge of the semi-cylindrical portion of the leg 40 will project beyond the periphery of the portion of the collar 38 in which said extension is seated. That portion of the flange 41 of the hub 36 that surrounds the surface of the collar 38 is provided with a series of semi-circular notches 44.

The relation of the cooperating parts of the clutch member may be best understood by reference to Fig. 7, from which it will be noted that the extremity of the leg 40 seats in a semi-circular recess in the collar 38 and that, when the spring 42 draws the outwardly extending leg 39 of the arm toward the pin 43, the extremity of the leg 40 will rock to a position so that it engages one of the notches 44 and thereby couples the hub 36 of the gear 35 to the collar 38; and, since the collar 38 is fast on the shaft 32, when the parts are in the position shown in Fig. 7 the shaft 32 will be rotated. When the parts are in the position shown in Fig. 4, the leg 40 is in a position so that the semi-cylindrical extremity thereof is within the periphery of the collar 38 and the clutch is out of engagement.

Since it is desired to synchronize the operation of the driving mechanism with the positioning of the containers below the discharging mechanism of the machine, a control construction operated by contact with the containers is provided.

It will be understood that the containers 45 are fed across the machine and below the housing 14 of the discharge member by conveying the [illegible] 46 across the front forwardly so that the edge of the disc 48 is in the path of the containers fed to the machine.

As the containers are successively brought under the tablet delivery device, the side walls of the containers contact with the circular disc 48 and move the lever 48 inwardly. This inward movement of the lever 48 closes the switch. The switch controls an electrical circuit 58 connected with a coil 51 of a solenoid. Obviously, when the container is in position to receive the discharged tablet, the switch will be closed and the coil of the solenoid energised. The solenoid includes, in addition to the coil 51, a stationary magnet 52 which is supported by the base plate 4 of the machine and an armature 53 loosely mounted on a rock shaft 54. The rock shaft 54 also carries a generally U-shaped arm 56 that extends over and beyond the armature 53, said arm being fixed to said rock shaft. The rock shaft 54 has an angular extension 56 the end of which provides a detent for the leg 39 of the clutch arm. The armature 53 is provided with a lateral extension forming an arm 57, which arm 57 has an elongated opening 58 near its extremity.

An inverted U-shaped bracket 59 is supported by spaced lugs 60 extending upwardly from the base plate 4. A latch plate 61 is supported between the arms of the bracket 59, the lower end of the plate extending between the adjacent faces of the lugs 60. The latch plate 61 is actuated by a contractile spring 62, one end of said spring being attached to the upper part of the bracket 59 and the other end of the spring extending through an eye in the upper end of the latch plate. The latch plate has an elongated opening 63 intermediate its length through which a pin 64 supported transversely of the arms of the bracket 59 extends. The lower end of the latch plate 61 has an inclined face 65 that contacts with a pin 66 supported between the arms of the bracket 59, said inclined face 65 cooperating with the pin 66 to cam the latch plate in the direction of the arrow (Fig. 4) when the latch plate is moved downwardly against the tendency of the spring 62.

Near the upper end of the latch plate is a pin 67 which extends into the elongated opening 58 in the arm 57 of the armature of the solenoid. The inner edge of the latch plate 61 is provided with a notch 68 which cooperates with a latch hook 69 at the outer extremity of the arm 56. The arm 56 is normally actuated to raised position by a contractile spring 70 connected at one end to said arm and at the opposite end to a lug 71 carried at the upper end of the bracket 59. The extent of upward movement of the arm 56 is regulated by an abutment comprising a lug 72 extending from the arm 56, which lug contacts with an adjustable screw 73 mounted in a boss 74 rising from the base plate 4.

In order to understand the operation of the clutch control device, it will be convenient to make reference to Fig. 4, in which the parts described are shown in released position.

In this view, the solenoid is deenergized and, therefore, the armature 53 is in raised position. The arm 56 is also raised, which rocks the shaft 54 to a position to bring the end of the arm [illegible] which the extremity of the leg 40 is turned so that it is out of engagement with the hub 37 of the gear 35. In this position, the gear 35 is free to rotate without rotating the shaft 32. The latch plate 61 is in its raised position and inclined in the direction opposite to the arrow in Fig. 4, which brings the latch hook 69 into engagement with the notch 68. This, therefore, represents the adjustment of the parts with the clutch out of engagement and the driving mechanism idle.

When a container 45 contacts with the disc 48, the lever 48 is moved inwardly, closing the switch 47 and thereby energizing the coil of the solenoid. This energizing of the coil of the solenoid draws the armature 53 downwardly. As the armature moves downwardly, the arm 57 carried thereby also moves downwardly and, by the pin-and-slot connection with the latch plate 61, moves the latch plate downwardly against the tendency of the spring 62. The lower inclined edge 65 of the latch plate as it moves downwardly is cammed to throw the upper extremity of the plate in the direction of the arrow. The initial downward movement of the latch plate also moves the arm 56 downwardly because of the engagement of the latch hook 69 with the notch 68. The movement of the arm 56 downwardly also moves the arm 56 downwardly and out of the path of the leg 39. As soon as the end of the arm 56 disengages from the leg 39, the spring 42 rocks the leg 40 to the position shown in Fig. 7, thereby coupling the collar 38 with the hub 36 of the gear 35. After the arm 56 has moved downwardly sufficiently to release the arm 56 from engagement with the leg 39, the movement of the latch plate in the direction of the arrow releases the latched engagement of the latch hook 69 with the notch 68 and the arm 56 is snapped upwardly by the spring 70, again bringing the end of the arm 56 into the path of the leg 39 so that, when one revolution of the shaft 32 has taken place, the abutment of the leg 39 against the end of the arm 56 will move the leg 40 again to unlocked position. This action will take place regardless of the position of the armature because the arm 56 is free to move upwardly independent of the armature 53. When the armature 53 is deenergized, the spring 62 will pull the latch plate 61 upwardly and, because of the position of the spring 62 during the upward movement of the latch plate, the latch plate will again move toward the position shown in Fig. 4 and the latch hook 69 will reengage with the notch 68.

It is thus apparent that the construction provides means for imparting a single revolution to the shaft 32 upon each energization of the solenoid and the clutch cannot be reengaged until the solenoid has been deenergized and the armature raised. Therefore, in the event of the containers failing to move out of contact with the switch lever, or if, for any other reason, the solenoid fails to deenergize after the switch has made contact, the depositing mechanism will not operate except to deposit the single tablet upon each energization of the solenoid.

The mechanism for forcing the tablet from the delivery device includes a plunger 75 mounted for vertical reciprocation in the chamber 16. with an eccentric strap 78. The upper portion of the strap 78 extends through the slots 76 and the pin 76 passes therethrough. The strap 78 is deflected inwardly at its lower end where it is connected with a crank arm 80 carried by the extremity of the shaft 32, a crank pin 81 serving to form a pivot connection between the crank arm 80 and the strap 78. The crank arm 80 reciprocates the plunger once for each revolution of the shaft 32. The plate 21 driven from the same shaft is driven at a reduced speed ratio so that the revolutionn of the plate 21 will be in a ratio of one revolution to the number of revolutions of the plunger equivalent to the number of discharge openings 23 in the plate 21. That is to say, the plunger will operate once for each tablet discharged into the tablet depositing device from the feed mechanism.

The plate 21 is so adjusted that the respective discharge openings 23 will register with the opening 26 in the ring 20 to discharge the tablet in the chute 13 as the plunger is moved upwardly. The tablet passes from the chute and is caught below the plunger by the nest of retaining springs 27. The plunger is then depressed, forcing the tablet out of the depositing device during the interval that the next discharge opening 23 is being brought to registration with the opening 26. It will thus be observed that a timed actuator is provided for separately discharging a single tablet for each operation of the feeding mechanism.

From the foregoing description, it will be understood that the general operation of the machine is briefly as follows:

The bulk supply of tablets is placed in the hopper 18. The tablets fall by gravity through the throat of the hopper which is controlled by the sliding plate 18. A quantity separated from the bulk of the tablets deposits upon the lower part of the plate 21. As the plate revolves, single tablets are separated from the bulk and seat in the openings 23, being guided to position by the concavities 24 in the forward edges of said openings. As the plate 21 revolves, the tablets are held in the openings 23 by the ring 20 until the respective openings register with the discharge opening 26 through the ring 20, whereupon they, by gravity, fall into the chute 13 through the opening 26 and into the nest of retaining springs 27. This deposit of the separate tablets occurs as the plunger moves upwardly. During the travel of the plate 21 to bring the next succeeding opening 23 into registration with the discharge opening, the plunger descends, pressing the tablet from its supported position. The movement of the feeding mechanism is accomplished by the setting of the switch 47 to closed position, which energizes the solenoid coil, thereby effecting a coupling of the driving gear 35 driven from the motor with the shaft 32 in such a way that the shaft 32 will make a single revolution, after which the clutch device is thrown to the disengaged position as hereinbefore pointed out in detail.

We are aware that the invention may be modified in numerous particulars without departing from the spirit and scope thereof, and we do not limit ourselves, therefore, to the exact construction shown and described, but what we claim

30. This beveled gear 30 is driven by a beveled pinion 31 carried on a shaft 32 supported in the lower housing of the machine in which it is journalled for rotation. The shaft 32 is intermittently driven from the motor shaft 33 which is constantly rotating. The motor shaft 33 carries a pinion 34 that meshes with a gear 35. The gear 35 has a hub 36 which in turn is carried by the outer ring of an anti-friction bearing 37, either of the ball-bearing or roller-bearing type. Thus the gear 35 constantly rotates its hub during the operation of the machine. The shaft 32 is intermittently connected with the gear 35 by a clutch device. This clutch device includes a collar 38, which is fast with the shaft 32. The collar carries an angular arm, said arm having one leg 39 thereof extending outwardly from the periphery of the collar and the opposite leg 40 extending inwardly parallel with the axis of the collar. The inner end of said leg 40 of the arm has a semi-cylindrical extremity that lies within an overhanging flange 41 on the hub 36 of the gear 35. The outwardly extending leg 39 of the arm has a contraction spring 42 connected therewith at one end, said spring 42 connecting at the opposite end with a pin 43 carried by the collar 38. The normal tendency of the spring 42 is to rock the arm so that the edge of the semi-cylindrical portion of the leg 40 will project beyond the periphery of the portion of the collar 38 in which said extension is seated. That portion of the flange 41 of the hub 36 that surrounds the surface of the collar 38 is provided with a series of semi-circular notches 44.

The relation of the cooperating parts of the clutch member may be best understood by reference to Fig. 7, from which it will be noted that the extremity of the leg 40 seats in a semi-circular recess in the collar 38 and that, when the spring 42 draws the outwardly extending leg 39 of the arm toward the pin 43, the extremity of the leg 40 will rock to a position so that it engages one of the notches 44 and thereby couples the hub 36 of the gear 35 to the collar 38; and, since the collar 38 is fast on the shaft 32, when the parts are in the position shown in Fig. 7 the shaft 32 will be rotated. When the parts are in the position shown in Fig. 4, the leg 40 is in a position so that the semi-cylindrical extremity thereof is within the periphery of the collar 38 and the clutch is out of engagement.

Since it is desired to synchronize the operation of the driving mechanism with the positioning of the containers below the discharging mechanism of the machine, a control construction operated by contact with the containers is provided.

It will be understood that the containers 45 are fed across the machine and below the housing 14 of the discharge member by conveying the containers on an endless belt 46 across the front of the machine. A switch, diagrammatically illustrated in Fig. 6 and indicated by the reference numeral 47, is normally open. It is actuated to closed position by a lever 48 positioned at the front of the machine and carrying a circular disc 49 at its outer end. The lever 48 is spring actuated and, in its normal position, extends with a coil 51 of a solenoid. Obviously, when the container is in position to receive the discharged tablet, the switch will be closed and the coil of the solenoid energized. The solenoid includes, in addition to the coil 51, a stationary magnet 52 which is supported by the base plate 4 of the machine and an armature 53 loosely mounted on a rock shaft 54. The rock shaft 54 also carries a generally U-shaped arm 55 that extends over and beyond the armature 53, said arm being fixed to said rock shaft. The rock shaft 54 has an angular extension 56 the end of which provides a detent for the leg 39 of the clutch arm. The armature 53 is provided with a lateral extension forming an arm 57, which arm 57 has an elongated opening 58 near its extremity.

An inverted U-shaped bracket 59 is supported by spaced lugs 60 extending upwardly from the base plate 4. A latch plate 61 is supported between the arms of the bracket 59, the lower end of the plate extending between the adjacent faces of the lugs 60. The latch plate 61 is actuated by a contractile spring 62, one end of said spring being attached to the upper part of the bracket 59 and the other end of the spring extending through an eye in the upper end of the latch plate. The latch plate has an elongated opening 63 intermediate its length through which a pin 64 supported transversely of the arms of the bracket 59 extends. The lower end of the latch plate 61 has an inclined face 65 that contacts with a pin 66 supported between the arms of the bracket 59, said inclined face 65 cooperating with the pin 66 to cam the latch plate in the direction of the arrow (Fig. 4) when the latch plate is moved downwardly against the tendency of the spring 62.

Near the upper end of the latch plate is a pin 67 which extends into the elongated opening 58 in the arm 57 of the armature of the solenoid. The inner edge of the latch plate 61 is provided with a notch 68 which cooperates with a latch hook 69 at the outer extremity of the arm 55. The arm 55 is normally actuated to raised position by a contractile spring 70 connected at one end to said arm and at the opposite end to a lug 71 carried at the upper end of the bracket 59. The extent of upward movement of the arm 55 is regulated by an abutment comprising a lug 72 extending from the arm 55, which lug contacts with an adjustable screw 73 mounted in a boss 74 rising from the base plate 4.

In order to understand the operation of the clutch control device, it will be convenient to make reference to Fig. 4, in which the parts described are shown in released position.

In this view, the solenoid is deenergized and therefore, the armature 53 is in raised position. The arm 55 is also raised, which rocks the shaft 54 to a position to bring the end of the arm in the path of movement of the leg 39. The direction of rotation of the gear 35 is indicated by the arrow. Obviously, when the clutch is in engagement, the collar 38 will have the same direction of rotation. Therefore, the contact between the end of the arm 56 and the leg 39 will move the leg 39 to a position as shown in Fig. 4, which represents the adjustment of the parts with the clutch out of engagement and the driving mechanism idle.

When a container 45 contacts with the disc 49, the lever 48 is moved inwardly, closing the switch 47 and thereby energizing the coil of the solenoid. This energizing of the coil of the solenoid draws the armature 53 downwardly. As the armature moves downwardly, the arm 57 carried thereby also moves downwardly and, by the pin-and-slot connection with the latch plate 61, moves the latch plate downwardly against the tendency of the spring 62. The lower inclined edge 65 of the latch plate as it moves downwardly is cammed to throw the upper extremity of the plate in the direction of the arrow. The initial downward movement of the latch plate also moves the arm 55 downwardly because of the engagement of the latch hook 69 with the notch 68. The movement of the arm 55 downwardly also moves the arm 56 downwardly and out of the path of the leg 39. As soon as the end of the arm 56 disengages from the leg 39, the spring 42 rocks the leg 40 to the position shown in Fig. 7, thereby coupling the collar 38 with the hub 36 of the gear 35. After the arm 56 has moved downwardly sufficiently to release the arm 55 from engagement with the leg 39, the movement of the latch plate in the direction of the arrow releases the latched engagement of the latch hook 69 with the notch 68 and the arm 55 is snapped upwardly by the spring 70, again bringing the end of the arm 56 into the path of the leg 39 so that, when one revolution of the shaft 32 has taken place, the abutment of the leg 39 against the end of the arm 56 will move the leg 40 again to unlocked position. This action will take place regardless of the position of the armature because the arm 55 is free to move upwardly independent of the armature 53. When the armature 53 is deenergized, the spring 62 will pull the latch plate 61 upwardly and, because of the position of the spring 62 during the upward movement of the latch plate, the latch plate will again move toward the position shown in Fig. 4 and the latch hook 69 will reengage with the notch 68.

It is thus apparent that the construction provides means for imparting a single revolution to the shaft 32 upon each energization of the solenoid and the clutch cannot be reengaged until the solenoid has been deenergized and the armature raised. Therefore, in the event of the containers failing to move out of contact with the switch lever, or if, for any other reason, the solenoid fails to deenergize after the switch has made contact, the depositing mechanism will not operate except to deposit the single tablet upon each energization of the solenoid.

The mechanism for forcing the tablet from the delivery device includes a plunger 75 mounted for vertical reciprocation in the chamber 14. The chamber 14 has registering vertical slots 76 in its side wall and the plunger 75 has a rectangular opening 77 through the body thereof. A pin 78 fitted in the body of the plunger serves as a pivot connection to connect the plunger reciprocates the plunger once for each revolution of the shaft 32. The plate 21 driven from the same shaft is driven at a reduced speed ratio so that the revolutioan of the plate 21 will be in a ratio of one revolution to the number of revolutions of the plunger equivalent to the number of discharge openings 23 in the plate 21. That is to say, the plunger will operate once for each tablet discharged into the tablet depositing device from the feed mechanism.

The plate 21 is so adjusted that the respective discharge openings 23 will register with the opening 25 in the ring 26 to discharge the tablet in the chute 13 as the plunger is moved upwardly. The tablet passes from the chute and is caught below the plunger by the nest of retaining springs 27. The plunger is then depressed, forcing the tablet out of the depositing device during the interval that the next discharge opening 23 is being brought to registration with the opening 25. It will thus be observed that a timed actuator is provided for separately discharging a single tablet for each operation of the feeding mechanism.

From the foregoing description, it will be understood that the general operation of the machine is briefly as follows:

The bulk supply of tablets is placed in the hopper 15. The tablets fall by gravity through the throat of the hopper which is controlled by the sliding plate 13. A quantity separated from the bulk of the tablets deposits upon the lower part of the plate 21. As the plate revolves, single tablets are separated from the bulk and seat in the openings 23, being guided to position by the concavities 24 in the forward edges of said openings. As the plate 21 revolves, the tablets are held in the openings 23 by the ring 26 until the respective openings register with the discharge opening 25 through the ring 26, whereupon they, by gravity, fall into the chute 13 through the opening 25 and into the nest of retaining springs 27. This deposit of the separate tablets occurs as the plunger moves upwardly. During the travel of the plate 21 to bring the next succeeding opening 23 into registration with the discharge opening, the plunger descends, pressing the tablet from its supported position. The movement of the feeding mechanism is accomplished by the setting of the switch 47 to closed position, which energizes the solenoid coil, thereby effecting a coupling of the driving gear 35 driven from the motor with the shaft 32 in such a way that the shaft 32 will make a single revolution, after which the clutch device is thrown to the disengaged position as hereinbefore pointed out in detail.

We are aware that the invention may be modified in numerous particulars without departing from the spirit and scope thereof, and we do not limit ourselves, therefore, to the exact construction shown and described, but what we claim and desire to secure by Letters Patent is:—

1. In a machine for depositing tablets in containers, the combination of a hopper, a unit discharge chamber having a downwardly directed discharge opening, a device for yieldingly holding

articles against passage from said discharge opening, a rotating plate having means for separating unit articles from the bulk of articles delivered from said hopper, a chute between said plate and said unit discharge chamber, whereby unit articles may be conveyed from the plate to the chamber, the yieldingly holding device containing them in the chamber, a plunger reciprocating in said unit discharge chamber to discharge the unit articles therefrom by overcoming said yielding device, and operating mechanism for said plunger and said plate whereby articles are discharged from said plate for passage to said unit discharge chamber in synchronism with the discharge of unit articles from said unit discharge chamber.

2. In a dispensing machine, the combination of a hopper, a discharge chute, a revoluble plate between the discharge chute and the hopper having a plurality of discharge openings therein for receiving and discharging unit articles, with operating mechanism for said plate comprising a constantly rotating prime mover, a driven shaft, a clutch between the prime mover and the driven shaft, an actuator for the clutch, an electrical solenoid for operating said actuator, a switch for controlling said solenoid, and a lever connected with said switch engageable by containers advanced to the machine to energise the solenoid when a container registers with the discharge chute.

3. In a dispensing machine, the combination of a hopper, a discharge chute, a revoluble plate between the discharge chute and the hopper having a plurality of discharge openings therein for receiving and discharging unit articles, with operating mechanism for said plate comprising a constantly rotating prime mover, a driven shaft, a clutch between the prime mover and the driven shaft, an actuator for the clutch, an electrical solenoid for operating said actuator, a switch for controlling said solenoid, a lever connected with said switch engageable by containers advanced to the machine to energise the solenoid when a container registers with the discharge chute, and a throw-out device for releasing the clutch following the energizing of said solenoid.

4. In a dispensing machine, the combination with a hopper having a downwardly opening discharge throat, of a base connected with the hopper inclining upwardly from the throat of the hopper, a flange on said base member, a revoluble plate mounted on the base the periphery of said plate being within the flange and said plate being provided with a plurality of openings adjacent the outer edge thereof and the surface of the plate being convex, a discharge chute connected with the upper portion of said base, an article delivery chamber connected with said chute, said chamber having a downwardly directed discharge opening, retaining means preventing the movement of articles through said discharge opening, an actuator for releasing the articles from said retaining means, operating ber immediately above said opening, communicating therewith and adapted to receive tablets fed by said means, a yielding device in said chamber adapted to retain a tablet fed by said means in a vertical line above said opening, a plunger adapted to be reciprocated in said vertical line and to discharge such tablet from the yielding device in a vertical line to a container under said opening, and mechanism for operating said plunger and said feeding means in timed relationship.

6. In a depositing machine, a plate for feeding tablets, a chute into which said plate discharges said tablets, an elongated chamber having an inlet passage in a wall, said passage being spaced from the end of the chamber, the chute communicating with the interior of said chamber through said passage, said elongated chamber having an opening in the bottom thereof through which the tablets may be discharged, resilient means extending inwardly from the walls of the chamber, and adapted yieldingly to hold the tablet from passing through the discharge opening, and a plunger in the chamber normally above the inlet passage, and reciprocable in said chamber to force the tablet therefrom.

7. In a machine for depositing tablets in a container, a rotary plate for separating individual tablets from a mass thereof, a discharge chamber having a discharge opening in the bottom thereof, fixed means conducting said individual tablets from said plate to said chamber, means in said chamber resiliently to retain the tablet from passing out said discharge opening, a plunger in said chamber adapted to reciprocate and force the discharge of the tablet against the action of said retaining means, a motor, driving means between said motor and said rotary plate whereby to rotate the plate, a driving means between the motor and the plunger whereby to actuate the plunger to discharge the tablet in synchronism with the action of the plate, and means actuated by the container when the same is in receiving position to control said driving means.

8. An apparatus for intermittently depositing tablets into containers, including a retainer having a discharge opening therein from which a tablet may be discharged into a container located in receiving relation therewith, means discharging the tablet from said retainer, a driving means therefor, a control device having an element moved by the container, in position, a mechanism for connecting said driving means with said discharge means, and releasable means interposed between said control device and said connecting mechanism so that said control device upon movement by the container causes said connecting mechanism to be actuated for driving the discharge means, said interposed means being automatically released after each actuation to break connection between the control device and the connecting mechanism regardless of the position of the said control device.

9. An apparatus for depositing tablets into

tainer in position to energise said electromagnet, an armature moved by said magnet, a clutch control device movable to position to permit engagement of the clutch, and means connecting the armature with the clutch control device during a portion of the movement of the armature to move the same and permit engagement of the clutch, and releasing the clutch control device after said portion of the movement of the armature whereby the clutch will be released regardless of the position of the armature.

10. An apparatus for depositing tablets into containers including means, having a discharge portion, for depositing a tablet into a container located in receiving relation to said discharge portion, means adapted to actuate said depositing means, and control mechanism for selectively causing said actuating means to operate the depositing means only for a predetermined operation, said control mechanism including a movable element, means in said mechanism operating said element by a container in the relation aforesaid, to a position wherein to permit said actuating means to operate the depositing means for said predetermined operation, and means in said mechanism releasing said element so that it may render the actuating means ineffective after said predetermined operation to operate the depositing means until the element operating means is returned to its starting position.

11. An apparatus for depositing tablets into containers including means, having a discharge portion, for depositing a tablet into a container located in receiving relation to said discharge portion, normally disconnected means adapted when connected therewith, to actuate said depositing means, mechanism for selectively controlling the connection of said actuating means to said depositing means, said control mechanism having an element operable to a position wherein the actuating means may be connected to the depositing means, and said mechanism having means operable from an initial position to move said element to said position, said means being operated by the presence of a container in the relation aforesaid, and said means releasing said element to position wherein to cause disconnection of said actuating means and said depositing means upon a predetermined operation of the latter, said element moving means being inoperable to move said element again until returned to said initial position.

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charge the unit articles therefrom by overcoming said yielding device, and operating mechanism for said plunger and said plate whereby articles are discharged from said plate for passage to said unit discharge chamber in synchronism with the discharge of unit articles from said unit discharge chamber.

2. In a dispensing machine, the combination of a hopper, a discharge chute, a revoluble plate between the discharge chute and the hopper having a plurality of discharge openings therein for receiving and discharging unit articles, with operating mechanism for said plate comprising a constantly rotating prime mover, a driven shaft, a clutch between the prime mover and the driven shaft, an actuator for the clutch, an electrical solenoid for operating said actuator, a switch for controlling said solenoid, and a lever connected with said switch engageable by containers advanced to the machine to energise the solenoid when a container registers with the discharge chute.

3. In a dispensing machine, the combination of a hopper, a discharge chute, a revoluble plate between the discharge chute and the hopper having a plurality of discharge openings therein for receiving and discharging unit articles, with operating mechanism for said plate comprising a constantly rotating prime mover, a driven shaft, a clutch between the prime mover and the driven shaft, an actuator for the clutch, an electrical solenoid for operating said actuator, a switch for controlling said solenoid, a lever connected with said switch engageable by containers advanced to the machine to energise the solenoid when a container registers with the discharge chute, and a throw-out device for releasing the clutch following the energising of said solenoid.

4. In a dispensing machine, the combination with a hopper having a downwardly opening discharge throat, of a base connected with the hopper inclining upwardly from the throat of the hopper, a flange on said base member, a revoluble plate mounted on the base the periphery of said plate being within the flange and said plate being provided with a plurality of openings adjacent the outer edge thereof and the surface of the plate being convex, a discharge chute connected with the upper portion of said base, an article delivery chamber connected with said chute, said chamber having a downwardly directed discharge opening, retaining means preventing the movement of articles through said discharge opening, an actuator for releasing the articles from said retaining means, operating mechanism for said plate and for said actuator for releasing articles from said retaining means and delivering articles to said chute in timed relation, and a control device under the influence of the movement of containers to said machine for controlling said actuator.

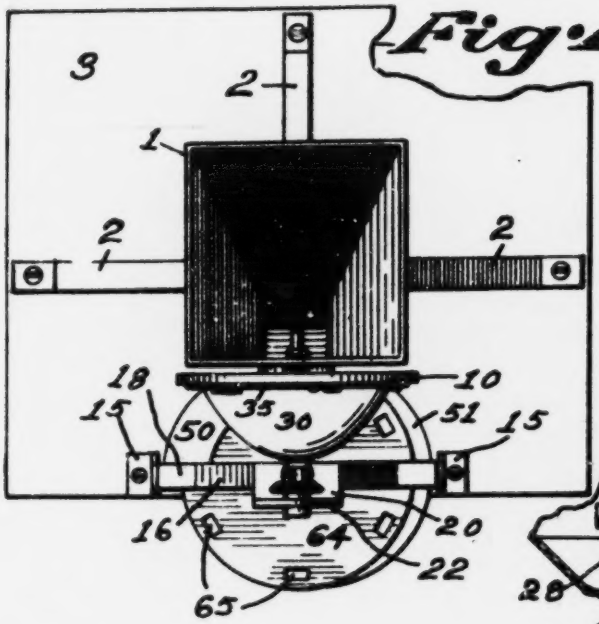
5. In a machine for depositing tablets in substantially filled containers, having a discharge opening under which such containers are moved, and means for feeding tablets singly toward said opening in an oblique direction thereto, a chamber and said feeding means in timed relationship.

6. In a depositing machine, a plate for feeding tablets, a chute into which said plate discharges said tablets, an elongated chamber having an inlet passage in a wall, said passage being spaced from the end of the chamber, the chute communicating with the interior of said chamber through said passage, said elongated chamber having an opening in the bottom thereof through which the tablets may be discharged, resilient means extending inwardly from the walls of the chamber, and adapted yieldingly to hold the tablet from passing through the discharge opening, and a plunger in the chamber normally above the inlet passage, and reciprocable in said chamber to force the tablet therefrom.

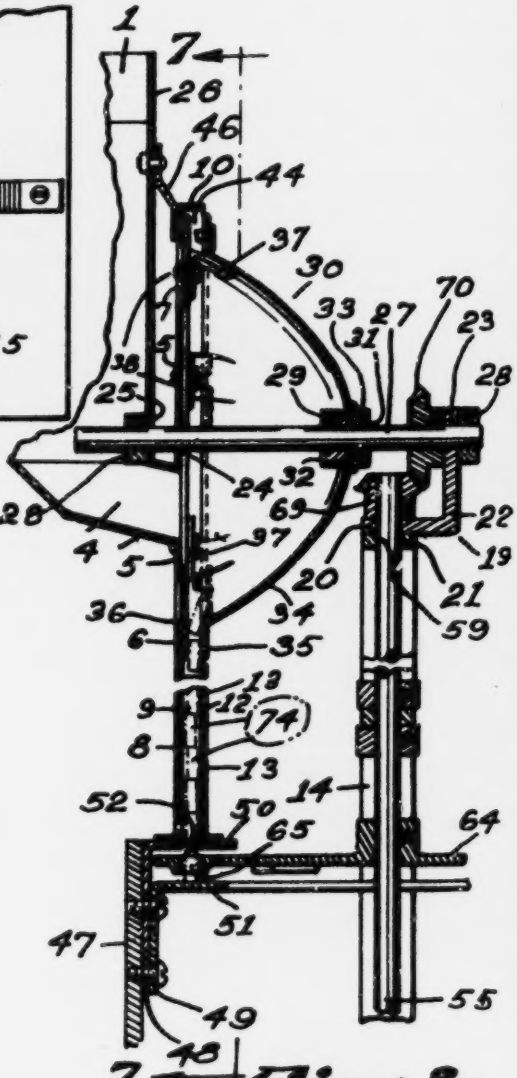
7. In a machine for depositing tablets in a container, a rotary plate for separating individual tablets from a mass thereof, a discharge chamber having a discharge opening in the bottom thereof, fixed means conducting said individual tablets from said plate to said chamber, means in said chamber resiliently to retain the tablet from passing out said discharge opening, a plunger in said chamber adapted to reciprocate and force the discharge of the tablet against the action of said retaining means, a motor, driving means between said motor and said rotary plate whereby to rotate the plate, a driving means between the motor and the plunger whereby to actuate the plunger to discharge the tablet in synchronism with the action of the plate, and means actuated by the container when the same is in receiving position to control said driving means.

8. An apparatus for intermittently depositing tablets into containers, including a retainer having a discharge opening therein from which a tablet may be discharged into a container located in receiving relation therewith, means discharging the tablet from said retainer, a driving means therefor, a control device having an element moved by the container, in position, a mechanism for connecting said driving means with said discharge means, and releasable means interposed between said control device and said connecting mechanism so that said control device upon movement by the container causes said connecting mechanism to be actuated for driving the discharge means, said interposed means being automatically released after each actuation to break connection between the control device and the connecting mechanism regardless of the position of the said control device.

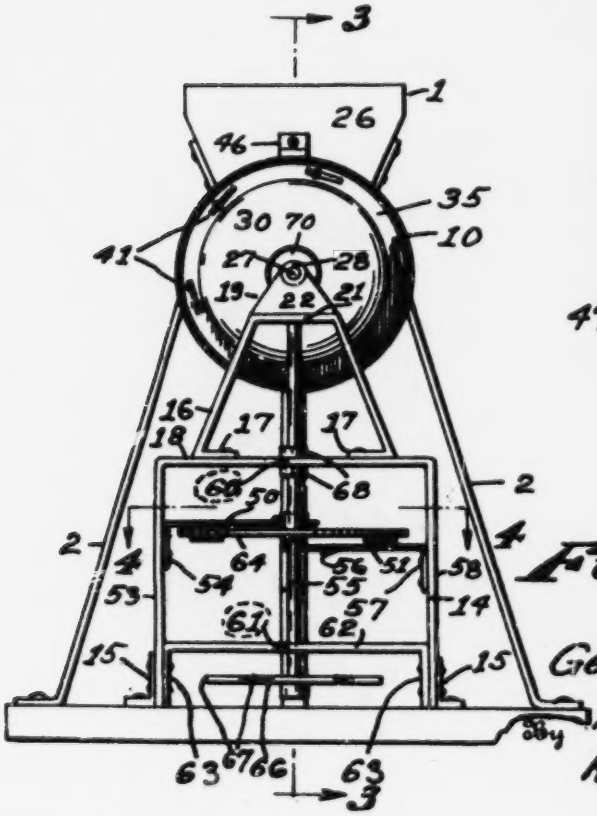
9. An apparatus for depositing tablets into containers, including a retainer having a discharge outlet from which a tablet may be discharged into a container located in receiving relation therewith, means discharging the tablet from said retainer, a driving means engageable therewith for actuation thereof, a clutch interposed between the driving means and the discharging means, and mechanism for controlling the clutch, said mechanism including an electromagnet, a switch operated by the con-



Fig·1·



7 Fig·3·



Fig·2·

Inventors:
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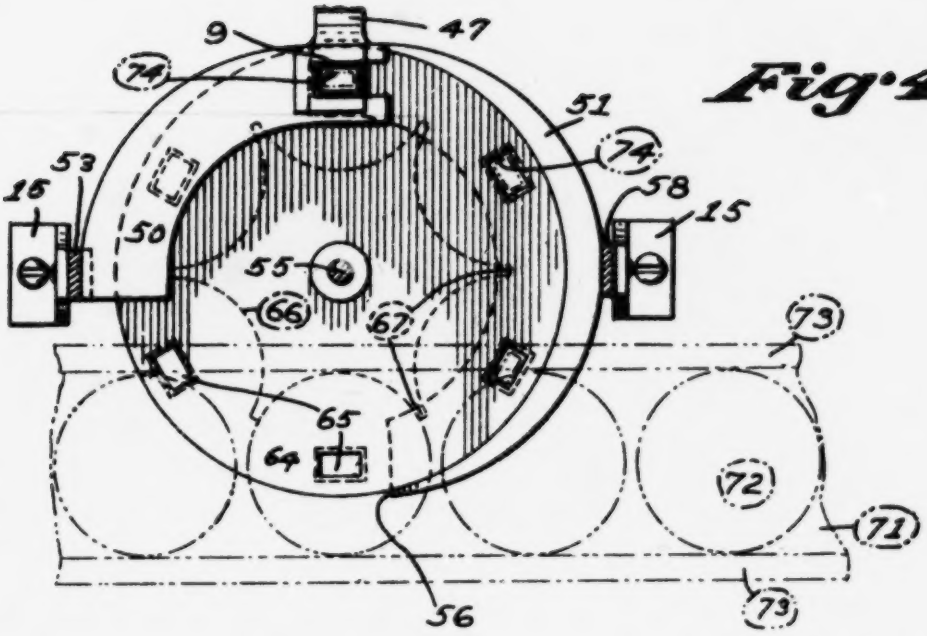
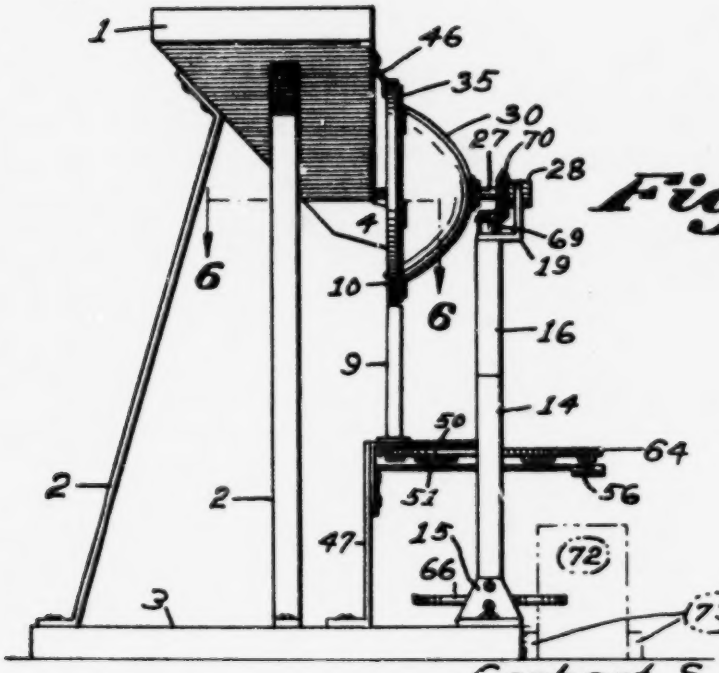


Fig·4.



Fig·5.

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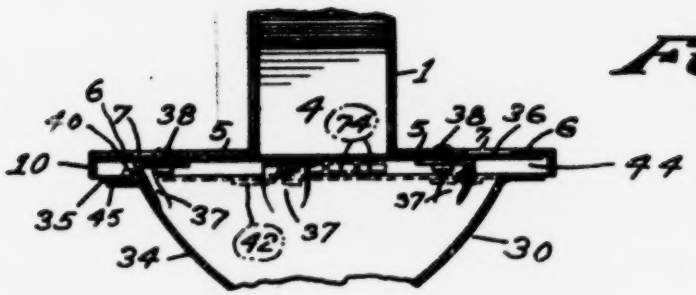

Fig. 6.

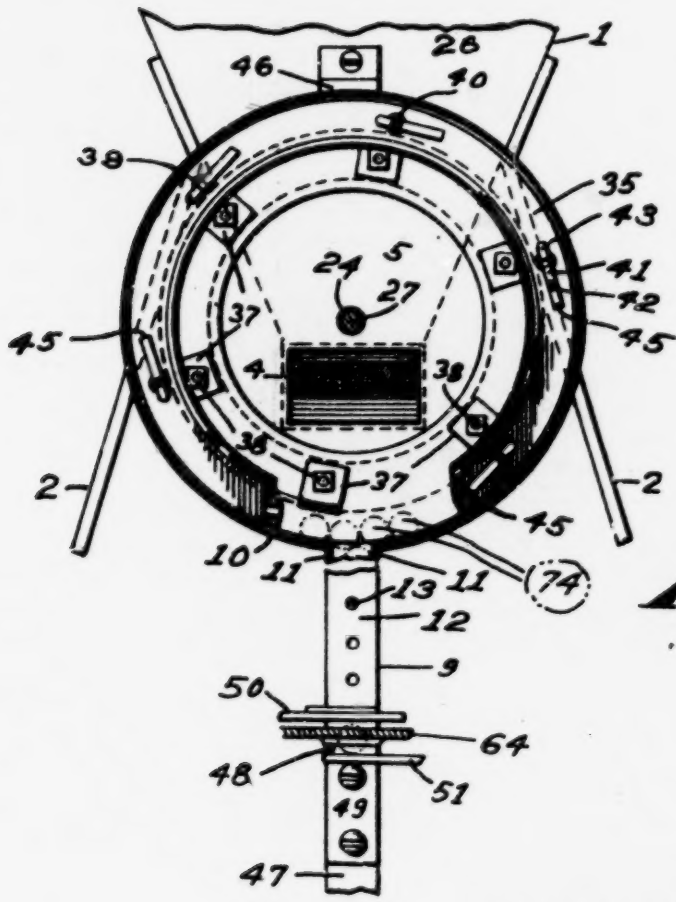

Fig. 7.

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UNITED STATES PATENT OFFICE

GERHART S. SUPPIGER AND HENRY G. WEGENER, OF COLLINSVILLE, ILLINOIS

APPARATUS FOR DISPENSING FLAVORING TABLETS

Application filed December 12, 1927. Serial No. 239,510.

This invention relates to dispensing machines, and has more particular reference to apparatus for dispensing predetermined charges of flavoring or other material in the form of coherent definite masses or units to receptacles that travel past the machine. The joint application of one of these applicants, Gerhart S. Suppiger, and Clyde Alexander, Serial No. 205,892, for a United States patent for method of, and apparatus for, dispensing flavoring tablets illustrates a dispensing machine of this character that is best adapted for dispensing charges that are spherical or substantially spherical in form. It is immaterial how such spherical units lie in their passage through the machine, since their dimensions in all directions are substantially equal. When, however, there is a material difference in the dimensions in different directions, as in the case of a flat disc or tablet, it is necessary to arrange the tablets so that they all lie in the same direction as they pass through the apportioning means. The purpose of the present invention is to provide an improved dispensing machine that is adapted to receive a supply of tablets in jumbled or hodge-podge relation, to arrange the jumbled tablets in an orderly manner so that they all lie in the same direction, and to apportion the orderly positioned tablets to the receptacles as they pass the machine, the machine preferably being driven by the traveling movement of the receptacles.

Other objects and advantages will appear in the course of the following description of a preferred embodiment of the invention.

In the accompanying drawings forming part of this specification, in which like numbers of reference denote like parts wherever they occur,

Figure 1 is a plan view of the tablet-dispensing machine;

Figure 2 is a front elevation of the same;

Figure 3 is a fragmentary vertical sectional view taken on the line 3—3 in Figure 2;

Figure 4 is a fragmentary horizontal sectional view, taken on the line 4—4 in Figure 2;

Figure 5 is an end elevation;

Figure 6 is a fragmentary horizontal sectional view, taken on the line 6—6 in Figure 5; and

Figure 7 is a fragmentary vertical sectional view, taken on the line 7—7 in Figure 3.

A hopper 1 is supported on standards 2, mounted on the base 3 of the machine. The hopper 1 develops at its lower forward end into a declining spout 4 that enlarges laterally at its outer end into a vertical wall or disc 5. An annular wall 6 is alined with and surrounds the wall 5, leaving an intervening annular space or gap 7 therebetween. The wall 6 enlarges downwardly at its lower end into the rear wall 8 of the vertical chute or conduit 9. A flange 10 projects forwardly from the outer edge of the wall 6 and enlarges downwardly at the wall 8 to form the side walls 11 of the chute 9. The front wall 12 of the chute 9 is provided with a series of perforations 13 that form sight-openings for the observance of the passage of tablets therethrough.

An inverted-U-shaped frame 14 is disposed forwardly of the chute 9 and secured to the base 3 by means of angle pieces 15. Another frame 16 of substantially inverted-U-shape is secured by its inwardly projecting flanges 17 to the horizontal arm 18 of the frame 14. An L-shaped bracket 19 comprises a horizontal arm 20, secured to the horizontal arm 21 of the frame 16, and a vertical arm 22, provided with a bearing 23, that is alined horizontally with an opening 24 in the disc wall 5 and with a bearing 25 in the front wall 26 of the hopper 1. A shaft 27 is journaled in the bearings 23 and 25, and projects forwardly of the bearing 23 and rearwardly of the bearing 25 into the hopper 1 to accommodate the collars 28 affixed thereto. The shaft 27 preferably extends into the hopper beyond the collar 28 thereat so as to serve as an agitator for the tablets contiguous thereto in the hopper. A boss or sleeve 29 is affixed to the shaft 27, and a cup-shaped receptacle 30 is mounted concentrically thereon, being apertured in the center to receive the externally screw-

threaded neck 31 of the boss 29, and being clamped against the shoulder 32 of the boss by means of a nut 33 on the neck 31. The peripheral wall 34 of the receptacle 30 slopes toward the annular wall 6 and enlarges radially at its terminus into an annular flange 35, that is alined vertically with the front wall 12 of the chute 9, and with its outer edge in proximity to the forward edge of the flange 10. An annular wall 36 closes the annular gap 7 and overlaps the walls 5 and 6 on their inner sides, and is affixed to lugs 37 on the wall 34 by means of bolts 38 that are accommodated by the annular space 7 to extend beyond the outer side of the wall 36. An annular series of perforations 39 are formed in the flange 35, and projections 40 of agitators or brushes 41 on the outer side of the flange 35 extend through the perforations 39. The brushes or wipers 41 are preferably formed of flat resilient strips of metal that extend across the perforations on the outer side of the flange 35 to different distances in opposite directions so as to form a comparatively long arm 42 at one side of the perforations and a comparatively short or stub arm 43 at the other side of the perforations, the portion 40 of the strips 41 intercalating said arms and being bent inwardly to project through the perforations 39 into the annular trough 44 that is defined by the wall 36 and the flanges 10 and 35. The outer end 45 of each long arm 42 is welded or otherwise suitably attached to the outer side of the flange 35 so that the bent portion 40 normally projects inwardly to its maximum extent, as shown in Figures 3 and 6. The upper portion of the flange 6 may be braced or stiffened by supporting the same from the front wall 26 of the hopper 1 by means of an intervening bracket or arm 46 secured at its ends to the respective parts.

A standard 47 affixed to the base 3 rearwardly of the chute 9 has its upper end attached to the depending flanges 48 and 49 of the horizontally disposed and vertically spaced arcuate plates 50 and 51, respectively. The upper plate 50 has the lower end of the chute 9 affixed thereto and is provided with an opening 52 alined with the passage of the chute 9 so as not to close the lower end thereof. The plate 50 extends from the standard 47 to the left leg 53 of the standard 14, Figures 2 and 4, and presents a depending flange 54, affixed to the leg 53. Plate 51 extends in a clockwise direction from the chute 9 substantially concentric with a vertical shaft 55, journaled centrally in the frame 14, and terminates at a point 56 that is approximately one hundred sixty-

bearing 60 in the bar 18 and in a bearing 61 in a horizontal bar 62 that connects the lower portions of the legs 53 and 58, the depending legs 63 of the bar 62 being attached to the legs 53 and 58.

A horizontal disc 64 is affixed to the shaft 55 intermediary of the plates 50 and 51 and is provided with a series of perforations 65 that are arranged to register successively with the discharge opening of the chute 9 as the shaft 55 rotates. A star wheel 66 is detachably affixed to the lower end of shaft 55 intermediary of the base 3 and the bar 62. The star wheel 66 is provided with as many projections 67 as there are perforations 65 in the apportioning disc 64, six being shown in the illustrated embodiment of the invention. Longitudinal displacement of shaft 55 is prevented by means of set collars 68 affixed thereto on either side of the bearing 60. Shaft 55 drives the shaft 27 through the intermediacy of bevel gears 69 and 70, affixed to the shafts 55 and 27, respectively.

The construction of the machine having been fully described, its operation will be readily understood. The machine is securely positioned along the side of a conveyor 71, that carries the receptacles 72, preferably between guides 73, that prevent lateral displacement of the receptacles. Assuming that the receptacles are moving from right to left as shown in Figure 4, they will engage the star wheel projections 67 that obstruct their path, so that each receptacle rotates the star wheel 66 clockwise through sixty degrees, since there are six projections 67 thereon. The hopper or tablet-supply holding means 1 having been previously loaded with a supply of jumbled tablets 74, of such dimensions that they can pass only edgewise into the trough 44, only edgewise and only in sequence through the chute 9, and that can be carried only one at a time in any perforation 65 in the apportioning disc 64, the rotation of the star wheel 66 results in the clockwise rotation of discharger disc 64, Figure 4, and in the rotation of the agitating shaft 27 and the agitating receptacle in a clockwise direction, as viewed in Figure 2. The agitation of the tablets in the hopper by that end of the shaft 27 that projects thereinto prevents clogging of the hopper and insures the gravitation of the tablets through the spout 4 into the rotating receptacle 30, the rotation of which agitates the tablets so that they ride down the sloping wall 34 and enter edgewise into the trough 44, from which they enter the chute 9 edgewise and descend therethrough in sequence only. Any tendency of the tablets to clog in the

37 serve, also, as agitators. Failure of the tablets to pass through the chute 9 may be observed through the openings 13 in the front wall 12 of the chute. When a tablet arrives at the bottom of the chute, it rides or rolls on the upper surface of the rotating disc 64 until an opening 65 is brought into alinement with the discharge end 52 of the conduit 9, whereupon the tablet falls edgewise into the opening 65 and is carried around with the disc 64, riding or rolling on the plate 51 until the end 56 thereof is reached, whence it drops into the receptacle that is immediately thereunder.

Having thus fully described this invention, we hereby reserve the benefit of all changes in form, arrangement, order, or use of parts, as it is evident that many minor changes may be made therein without departing from the spirit of this invention or the scope of the following claims.

We claim:

1. In a tablet-dispensing machine, a hopper adapted to receive the material and having a declining spout, a rotatable receptacle having its walls sloping upwardly and outwardly below said spout and presenting an annular flange spaced from the outer end of said spout, an annular wall associated with said hopper and presenting a lateral flange cooperating with the flange of said receptacle to define a trough constricted in width to receive the tablets edgewise as they drop from said spout, a shaft rotatably carrying said receptacle, means borne by said annular flange and extending into said trough to prevent clogging of the tablets therein, lugs positioned inwardly of said means for agitating the tablets in said receptacle and a chute for receiving the tablets from said trough.

2. In a tablet-dispensing machine, a hopper adapted to receive the material and having a spout enlarged laterally at its outer end to form a disc, an annular wall surrounding said disc and having a lateral flange, a rotatable receptacle presenting an annular flange spaced from said wall, said annular flange cooperating with said lateral flange to define a trough constricted in width to receive the tablets edgewise as they drop from said spout, a shaft rotatably carrying said receptacle, means borne by said annular flange and extending into said trough to prevent clogging of the tablets therein, lugs positioned inwardly of said means for agitating the tablets in said receptacle and a chute for receiving the tablets from said trough.

In testimony whereof we hereunto affix our signatures.

...ay at its terminus into an annular flange 35, that is alined vertically with the front wall 12 of the chute 9, and with its outer edge in proximity to the forward edge of the flange 10. An annular wall 36 closes the annular gap 7 and overlaps the walls 5 and 6 on their inner sides, and is affixed to lugs 37 on the wall 34 by means of bolts 38 that are accommodated by the annular space 7 to extend beyond the outer side of the wall 36. An annular series of perforations 39 are formed in the flange 35, and projections 40 of agitators or brushes 41 on the outer side of the flange 35 extend through the perforations 39. The brushes or wipers 41 are preferably formed of flat resilient strips of metal that extend across the perforations on the outer side of the flange 35 to different distances in opposite directions so as to form a comparatively long arm 42 at one side of the perforations and a comparatively short or stub arm 43 at the other side of the perforations, the portion 40 of the strips 41 intercalating said arms and being bent inwardly to project through the perforations 39 into the annular trough 44 that is defined by the wall 36 and the flanges 10 and 35. The outer end 45 of each long arm 42 is welded or otherwise suitably attached to the outer side of the flange 35 so that the bent portion 40 normally projects inwardly to its maximum extent, as shown in Figures 3 and 6. The upper portion of the flange 6 may be braced or stiffened by supporting the same from the front wall 26 of the hopper 1 by means of an intervening bracket or arm 46 secured at its ends to the respective parts.

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Having thus fully described this invention, we hereby reserve the benefit of all changes in form, arrangement, order, or use of parts, as it is evident that many minor changes may be made therein without departing from the spirit of this invention or the scope of the following claims.

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2. In a tablet-dispensing machine, a hopper adapted to receive the material and having a spout enlarged laterally at its outer end to form a disc, an annular wall surrounding said disc and having a lateral flange, a rotatable receptacle presenting an annular flange spaced from said wall, said annular flange cooperating with said lateral flange to define a trough constricted in width to receive the tablets edgewise as they drop from said spout, a shaft rotatably carrying said receptacle, means borne by said annular flange and extending into said trough to prevent clogging of the tablets therein, lugs positioned inwardly of said means for agitating the tablets in said receptacle and a chute for receiving the tablets from said trough.

In testimony whereof we hereunto affix our signatures.

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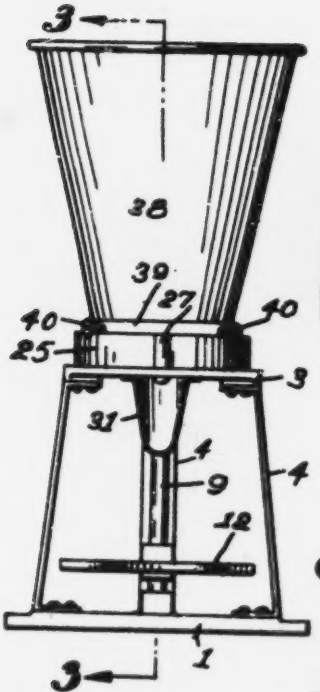
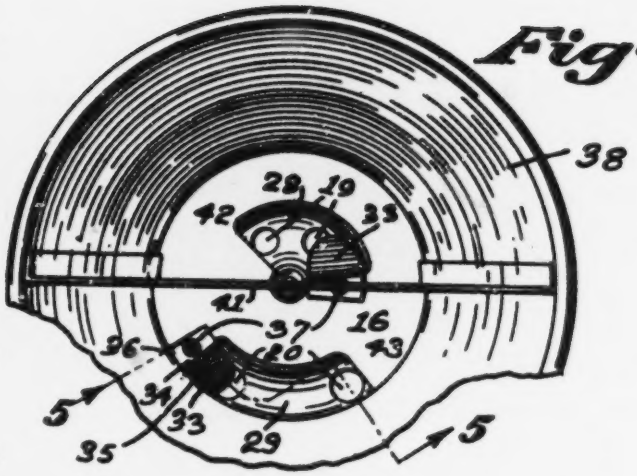
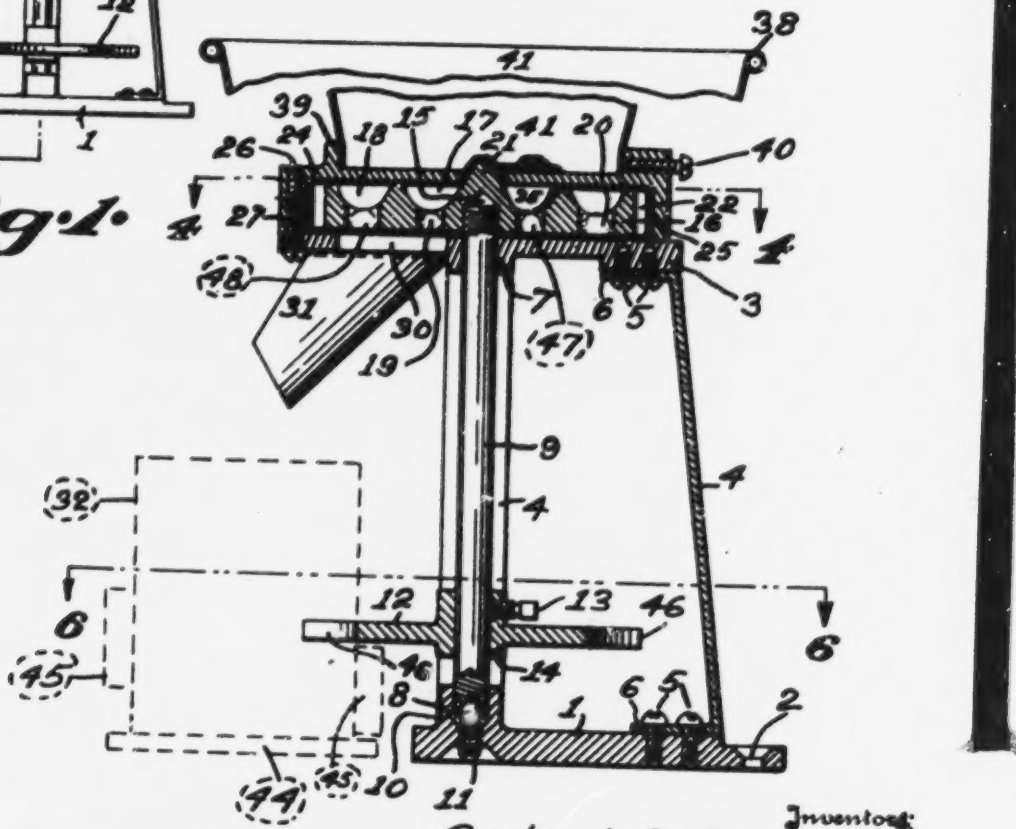


Fig·1·



Fig·2·



Fig·3·

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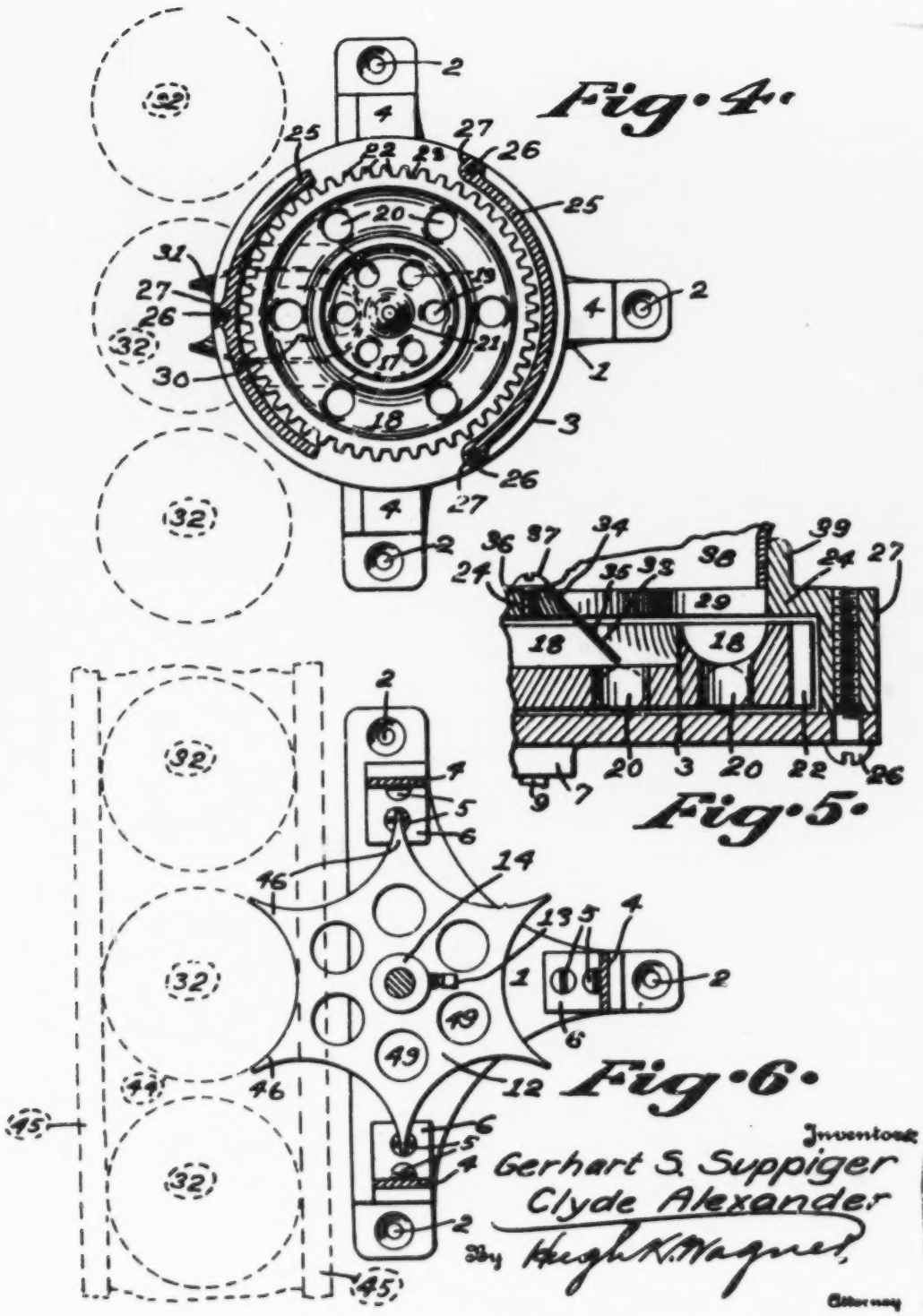

GERHART S. SUPPIGER AND CLYDE ALEXANDER, OF BELLEVILLE, ILLINOIS, ASSIGNORS TO SCIENTIFIC TABLET COMPANY, OF EAST ST. LOUIS, ILLINOIS, A CORPORATION OF ILLINOIS

APPARATUS FOR DISPENSING FLAVORING MATERIALS

Application filed July 15, 1927. Serial No. 205,892.

This invention relates to an apparatus for distributing granulated flavoring materials, such as sugar, salt, and the like, in predetermined quantities to food products, such, for instance, as tomatoes, that have been placed in cans or receptacles in the course of packing them for the market.

In some canning plants it is the practice to add the flavoring materials to the filled receptacles by means of spoons in the hands of attendants stationed along a conveyor on which the receptacles are carried from one point of operation to another. This method of dispensing the flavoring material is objectionable because large amounts are spilled and wasted, and, moreover, there is a considerable variation in quantity between the successive charges of material that the spoons convey. Besides, the item of wages paid to the attendants or employees is, also, a desideratum.

Accordingly, this invention purposes to dispense the flavoring materials automatically, so as to insure precision and uniformity in the amounts distributed to the receptacles, to prevent spilling, and, also, to economize labor in the manufacture of the product.

A further object of the invention is to provide a dispensing machine that may be driven by the traveling movement alone of the receptacles on the conveyor, so that no additional source of power or driving mechanism is required.

Other objects and advantages, more or less incidental or ancillary to the foregoing, will appear in the course of the following description, which sets forth a preferred embodiment for the purpose of illustrating the invention.

In the accompanying drawings forming part of this specification, in which like numbers of reference denote like parts wherever they occur,

Figure 1 is a front elevation of the machines;

Figure 2 is a fragmentary plan view;

Figure 3 is a vertical central sectional view taken on the line 3—3 in Figure 1;

Figure 4 is a horizontal sectional view taken on the line 4—4 in Figure 3.

Figure 5 is a vertical sectional view taken on the irregular line 5—5 in Figure 2; and

Figure 6 is a horizontal sectional view taken on the line 6—6 in Figure 3.

The invention contemplates compressing predetermined quantities of the flavoring material into coherent masses or charges, preferably spherical or approximately spherical in form, so that they may be easily handled by the dispensing machine without packing or clogging the latter, as might occur if the material were passed through the machine in granulated form. Furthermore, since each charge is handled as a compact unit, the whole charge is dispensed simultaneously, without the possibility of a portion thereof preceding or lagging behind the major portion thereof, thereby insuring precision in dispensing the same.

The base 1 of the machine is provided with openings 2 for the reception of screws or bolts by means of which it may be fastened alongside a conveyor or other suitable support adjacent thereto. A plate or block 3 is disposed above the base 1 and secured thereto in spaced relation by spacer bars or uprights 4, secured to the said base and plate by means of screws 5, passing through flanges 6 of the said bars. Plate 3 is provided with a concentric bearing 7, that extends vertically therethrough and in alinement with a step bearing 8 in the base 1. A shaft 9 is journaled in the bearings 7 and 8, and is supported in the bearing 8 on a polished steel ball 10 that is supported on a set screw 11, screw-threaded into the base 1 from the bottom thereof, and by means of which the shaft 9 may be adjusted longitudinally. A star wheel 12 is affixed to the shaft 9 by means of a set screw 13, that passes in threaded relation into the hub 14 of the said star wheel.

The upper end of shaft 9 projects beyond the top of the plate 3 and is screw-threaded to fit the tapped hole 15, that opens into the bottom of a plate 16. Plate 16 is provided in its top face with one or more annular grooves, there being two such grooves, 17 and 18, respectively, shown in the present embodiment. An annular series of openings 19 extend through the plate 16 from the bottom of the inner groove 17, and another annular series of openings 20 extend through the plate 16

from the bottom of the outer groove 18, and preferably in radial alinement with the openings 19. The inner side of groove 17 preferably rises above the top face of the plate 16 to form a central conical boss 21. Gear teeth 22 are preferably formed around the annular lateral outer face 23 of the plate 16. A plate 24 is disposed over the plate 16 and presents depending circumferentially extending flanges 25, that partly enclose the plate 16 and rest on the plate 3 to maintain the plates 3 and 24 in spaced-apart relation. Plates 3 and 24 are secured together by means of screws 26, that pass in unthreaded relation through plate 3 and in threaded relation into bosses 27, formed on the flanges 25. Plate or disc 24 is provided with elongated openings 28 and 29 that overlie the grooves 17 and 18, respectively, in the rotary disc 16. Plate 3 is provided with an opening 30 that is preferably slightly wider than the opening 20 and is elongated radially so that any pair of openings 19 and 20 may be brought into registration therewith by rotating the disc 16 to the appropriate position. The openings 28 and 29 are disposed out of alinement with the opening 30, being preferably spaced ninety degrees therefrom and one hundred eighty degrees apart from each other. A spout 31 is secured to the underside of disc 3 around the opening 30, and conveys the flavoring material that is discharging from the opening 30 into the cans or receptacles 32. The openings 28 and 29 are provided with forwardly inclined surfaces 33, that is, surfaces that are inclined in the direction of rotation of the disc 16, and, in the illustrated embodiment, the disc rotates clockwise as viewed from the top. The surfaces 33 extend from near the bottom of the grooves 17 and 18 to the forward edges of the openings 19 and 20. The said surfaces may be formed on projections that are cast integral with the disc 24, or they may be formed of sheet metal projections 34 that are bent to present an inclined flange 35, and a horizontal flange 36, secured by means of screws 37 to the upper side of the disc 24.

A hopper 38, preferably of sheet metal, has its bottom edge supported on the plate 24, and is prevented from becoming displaced laterally by means of a flange 39, that rises from the plate 24 and surrounds the lower edge of the hopper. The hopper may be affixed to the plate 24 by means of set screws 40, that pass in threaded relation through the flange

tween guides 45, that prevent lateral displacement of the receptacles. Assuming that the receptacles are moving away from the observer, Figure 3, they will engage the star wheel projections 46 that obstruct their path, so that each receptacle rotates the star wheel clockwise through sixty degrees, since there are six projections 46 thereon. The hopper or charge-retaining means 38 having been previously loaded with flavoring material, compartment 42, say, with spheres or tablets 47 of sugar, and compartment 43 with spheres or tablets 48 of salt, of such size that they can pass freely through the openings 19 and 20, but not more than one at a time, the rotation of discharger disc 16 agitates the spheres or charges that rest thereon and causes them to enter the openings 19 and 20, and, when the openings 19 and 20 that contain them are brought into registration with the opening 30, the charges 47 and 48 fall therethrough and down the spout 31 into the open receptacle 32 disposed immediately thereunder. The inclined projections 35 allow surplus charges to ride up out of the grooves 17 and 18, and thereby prevent them from being drawn in between the plate 24 and the bottoms of the grooves 17 and 18, the rounded sides and extent of the exposed portions of the moving grooves facilitating the agitation of the charges and their delivery to the openings 19 and 20. The conical projection 21 that rises from discharger 16 through the central opening in the bottom plate 24 also assists in the agitation.

The screw 11 is adjusted so that the weight of the discharger member 16, driving member 12, and shaft 9 is borne entirely by the ball 10, thereby reducing friction between the discharger member 16 and the bottom plate 3. The weight of the members 16 and 12 is minimized by casting them of aluminum, and openings 49 may be formed in the member 12 to further lighten the same. This construction allows the parts to be r very little effort. The parts may disassembled, and different size wheels may be used interchange different sizes of cans 32.

If desired, additional hoppers m vided and arranged so that their spou feed simultaneously into the same receptacle, the members 16 of the additional hoppers all being driven by the star wheel of the first hopper through intermediate gearing that

We claim:

1. A machine for dispensing pellets comprising a hopper having a bottom member provided with a discharge opening, a bottom wall supported in spaced relationship from the bottom member of said hopper, said bottom wall having a discharge opening, a rotatable plate mounted between the bottom member of the hopper and said wall provided with an annular groove in its upper surface overlying the opening in said wall and with an opening extending from the bottom of the groove to the undersurface of the plate, and a projection extending into said annular groove and adapted to remove surplus charges of pellets therefrom.

2. A machine for dispensing pellets comprising a hopper having a bottom member provided with an opening elongated circumferentially, a marginal flange connected with said bottom member, a wall secured to said flange and spaced from said bottom member, said wall having a discharge opening, a plate rotatably mounted on said wall and having an annular groove in its upper surface underlying the opening in the bottom member of the hopper and disposed across the discharge opening and provided with an opering extending from the bottom of the annular groove to the undersurface of the plate, and a projection affixed to the bottom member of the hopper and extending through the elongated opening therein to substantially the bottom of the annular groove and adapted to remove surplus charges of pellets therefrom.

3. A machine for dispensing pellets comprising a hopper having a bottom member provided with an opening elongated circumferentially, a marginal flange connected to said member and depending downwardly therefrom, a bottom wall secured to said flange provided with a discharge opening, a rotatably mounted on said bottom wall provided with an annular groove in its surface underlying the opening in the m member of the hopper and disposed s said discharge opening, said groove beprovided with spaced passageways to the rsurface of the plate, and a projection affixed to the bottom member of the hopper and extending through the elongated opening therein to substantially the bottom of the annular groove and adapted to remove sur-

diy ... above the ...

to form a central conical boss 21. Gear teeth 22 are preferably formed around the annular lateral outer face 23 of the plate 16. A plate 24 is disposed over the plate 16 and presents depending circumferentially extending flanges 25, that partly enclose the plate 16 and rest on the plate 3 to maintain the plates 3 and 24 in spaced-apart relation. Plates 3 and 24 are secured together by means of screws 26, that pass in unthreaded relation through plate 3 and in threaded relation into bosses 27, formed on the flanges 25. Plate or disc 24 is provided with elongated openings 28 and 29 that overlie the grooves 17 and 18, respectively, in the rotary disc 16. Plate 3 is provided with an opening 30 that is preferably slightly wider than the opening 20 and is elongated radially so that any pair of openings 19 and 20 may be brought into registration therewith by rotating the disc 16 to the appropriate position. The openings 28 and 29 are disposed out of alinement with the opening 30, being preferably spaced ninety degrees therefrom and one hundred eighty degrees apart from each other. A spout 31 is secured to the underside of disc 3 around the opening 30, and conveys the flavoring material that is discharging from the opening 30 into the cans or receptacles 32. The openings 28 and 29 are provided with forwardly inclined surfaces 33, that is, surfaces that are inclined in the direction of rotation of the disc 16, and, in the illustrated embodiment, the disc rotates clockwise as viewed from the top. The surfaces 33 extend from near the bottom of the grooves 17 and 18 to the forward edges of the openings 19 and 20. The said surfaces may be formed on projections that are cast integral with the disc 24, or they may be formed of sheet metal projections 34 that are bent to present an inclined flange 35, and a horizontal flange 36, secured by means of screws 37 to the upper side of the disc 24.

A hopper 38, preferably of sheet metal, has its bottom edge supported on the plate 24, and is prevented from becoming displaced laterally by means of a flange 39, that rises from the plate 24 and surrounds the lower edge of the hopper. The hopper may be affixed to the plate 24 by means of set screws 40, that pass in threaded relation through the flange 39 and are adapted to bear against the outer side of the hopper. A partition 41 divides the hopper into compartments 42 and 43 that communicate with the openings 28 and 29, respectively.

The construction of the machine having been fully described, its operation will be readily understood. The machine is securely positioned along the side of a conveyor 44, that carries the receptacles 32, preferably below the wheel projections 46 that obstruct their path, so that each receptacle rotates the star wheel clockwise through sixty degrees, since there are six projections 46 thereon. The hopper or charge-retaining means 38 having been previously loaded with flavoring material, compartment 42, say, with spheres or tablets 47 of sugar, and compartment 43 with spheres or tablets 48 of salt, of such size that they can pass freely through the openings 19 and 20, but not more than one at a time, the rotation of discharger disc 16 agitates the spheres or charges that rest thereon and causes them to enter the openings 19 and 20, and, when the openings 19 and 20 that contain them are brought into registration with the opening 30, the charges 47 and 48 fall therethrough and down the spout 31 into the open receptacle 32 disposed immediately thereunder. The inclined projections 35 allow surplus charges to ride up out of the grooves 17 and 18, and thereby prevent them from being drawn in between the plate 24 and the bottoms of the grooves 17 and 18, the rounded sides and extent of the exposed portions of the moving grooves facilitating the agitation of the charges and their delivery to the openings 19 and 20. The conical projection 21 that rises from discharger 16 through the central opening in the bottom plate 24 also assists in the agitation.

The screw 11 is adjusted so that the weight of the discharger member 16, driving member 12, and shaft 9 is borne entirely by the ball 10, thereby reducing friction between the discharger member 16 and the bottom plate 3. The weight of the members 16 and 12 is minimized by casting them of aluminum, and openings 49 may be formed in the member 12 to further lighten the same. This construction allows the parts to be rotated with very little effort. The parts may be readily disassembled, and different sizes of star wheels may be used interchangeably to fit different sizes of cans 32.

If desired, additional hoppers may be provided and arranged so that their spouts all feed simultaneously into the same receptacle, the members 16 of the additional hoppers all being driven by the star wheel of the first hopper through intermediate gearing that meshes with the gear teeth 22 of the members 16.

Having thus fully described this invention, we hereby reserve the benefit of all changes in form, arrangement, order, or use of parts, as it is evident that many minor changes may be made therein without departing from the spirit of this invention or the scope of the following claims.

prising a hopper having a bottom member provided with a discharge opening, a bottom wall supported in spaced relationship from the bottom member of said hopper, said bottom wall having a discharge opening, a rotatable plate mounted between the bottom member of the hopper and said wall provided with an annular groove in its upper surface overlying the opening in said wall and with an opening extending from the bottom of the groove to the undersurface of the plate, and a projection extending into said annular groove and adapted to remove surplus charges of pellets therefrom.

2. A machine for dispensing pellets comprising a hopper having a bottom member provided with an opening elongated circumferentially, a marginal flange connected with said bottom member, a wall secured to said flange and spaced from said bottom member, said wall having a discharge opening, a plate rotatably mounted on said wall and having an annular groove in its upper surface underlying the opening in the bottom member of the hopper and disposed across the discharge opening and provided with an opening extending from the bottom of the annular groove to the undersurface of the plate, and a projection affixed to the bottom member of the hopper and extending through the elongated opening therein to substantially the bottom of the annular groove and adapted to remove surplus charges of pellets therefrom.

3. A machine for dispensing pellets comprising a hopper having a bottom member provided with an opening elongated circumferentially, a marginal flange connected to said member and depending downwardly therefrom, a bottom wall secured to said flange provided with a discharge opening, a plate rotatably mounted on said bottom wall and provided with an annular groove in its upper surface underlying the opening in the bottom member of the hopper and disposed across said discharge opening, said groove being provided with spaced passageways to the undersurface of the plate, and a projection affixed to the bottom member of the hopper and extending through the elongated opening therein to substantially the bottom of the annular groove and adapted to remove surplus charges of pellets therefrom.

In testimony whereof we hereunto affix our signatures.

GERHART S. SUPPIGER.
CLYDE ALEXANDER.

METHOD OF FLAVORING IN CANNING, PRESERVING, AND BOTTLING OPERATIONS

Filed Jan. 2, 1931

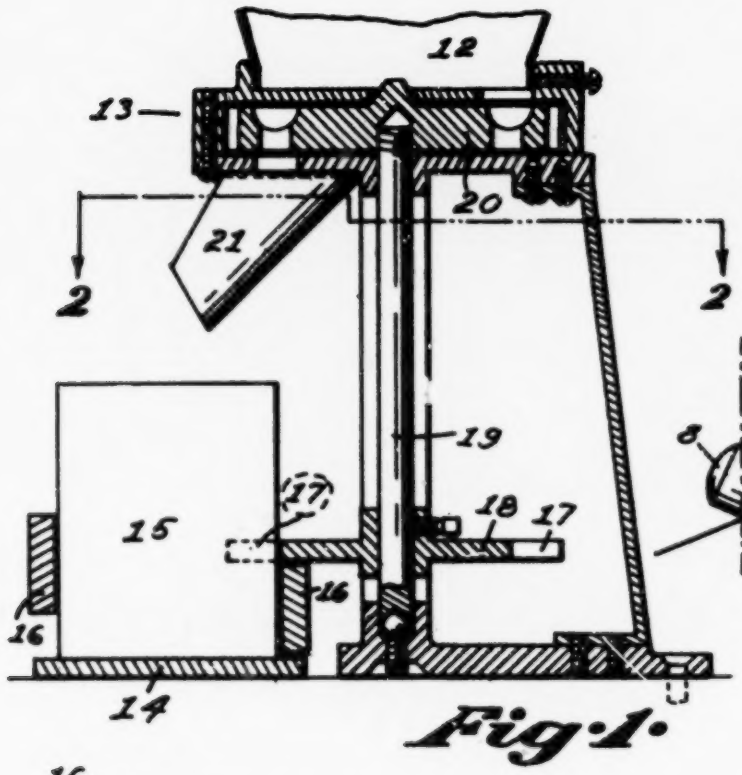

Fig. 1.

Fig. 3.

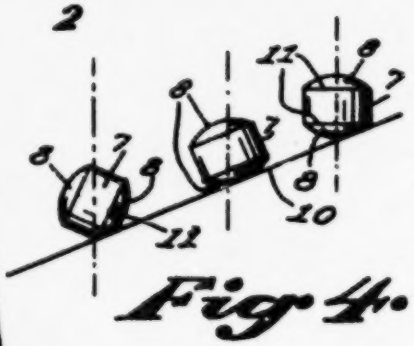

Fig. 4.

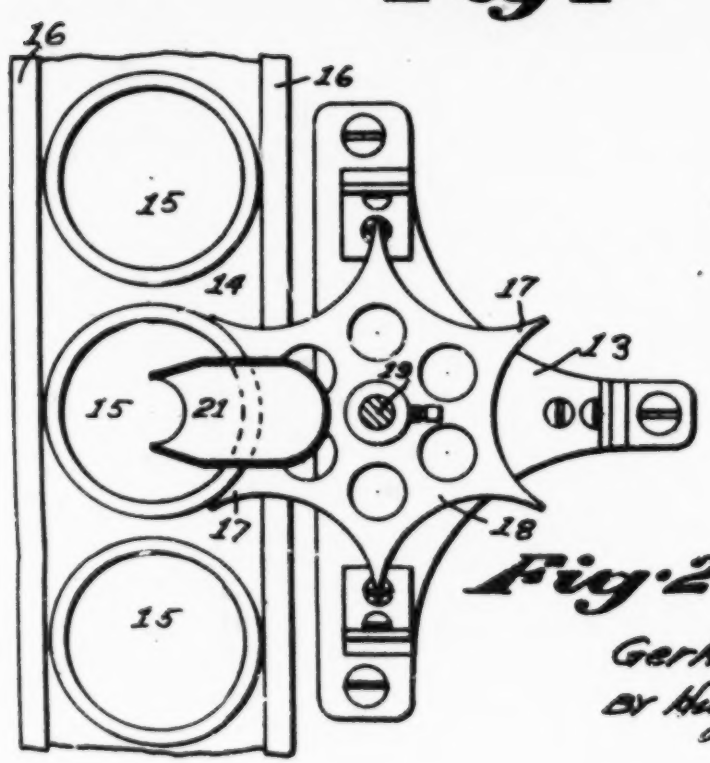

Fig. 2.

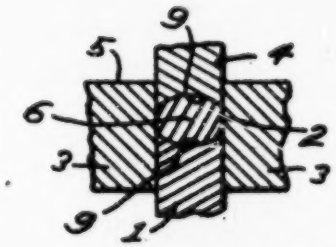

Fig. 5.

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By Hughes & Wagner.
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UNITED STATES PATENT OFFICE

GERHART S. SUPPIGER, OF BELLEVILLE, ILLINOIS, ASSIGNOR TO SCIENTIFIC TABLET COMPANY, OF BELLEVILLE, ILLINOIS, A CORPORATION OF ILLINOIS

METHOD OF FLAVORING IN CANNING, PRESERVING, AND BOTTLING OPERATIONS

Application filed January 2, 1931. Serial No. 506,979.

This invention relates to a method of flavoring in canning, preserving and bottling operation; and consists in the novel procedure hereinafter disclosed.

The application is a continuation in part of my prior application Serial No. 145,706, filed November 1, 1926, for flavoring tablets, and a continuation in part of my application Serial No. 205,892, filed July 15, 1927, for apparatuses for and method of dispensing flavoring materials.

Heretofore, the flavoring or seasoning materials, such as sugar, salt, and the like, have been added to the food receptacles or merchantable containers in finely divided, comminuted, or granulated form. This method of dispensing the material is objectionable because some of it is inevitably spilled or deposited outside of the can or container for the food product, especially when the comminuted seasoning or flavoring material is dispensed manually by means of spoons, in which case the charges that the spoons convey will obviously vary in quantity. The desirability of obviating these disadvantages will be better appreciated when it is understood that the charges of flavoring or seasoning material are usually added to the containers while they are rapidly traveling in sequence past the dispensing point or station, thereby aggravating the tendency to spill. Moreover, a charge of finely divided material tends to spread in falling and the stream must necessarily flow a longer time than would the concentrated charge of a single body, thereby increasing the liability of spilling and nonuniformity.

Furthermore, if the flavoring or seasoning terial is soluble, it will dissolve much more wly when it is concentrated into a single dy than when it is loose and finely divided, ce the concentrated single body presents uch smaller surface to the solvent in proion to its mass or volume than does the y divided material. In some canning rations heretofore employed, a solution of seasoning or flavoring material, if sole, is first prepared and then added to the d product, principally because a solution, ts use is desirable, can be more easily dispensed than the finely divided material. However, the applicant has discovered that it may be highly advantageous in some cases to add the soluble material to the food product or its container in solid form, and concentrated into a single body so as to delay its solution, as will hereinafter more fully appear.

Accordingly, this invention purposes to consolidate the uniform charges of loose granular or comminute material into single bodies, which are then distributed to the containers, preferably, although not necessarily, by any suitable automatic dispensing machine, of which that disclosed in the aforesaid application, Serial 205,892, is typical.

Other objects, advantages, and desirable features of the invention will appear in the course of the following description of an illustrative embodiment of the spirit thereof.

In the accompanying drawing forming part of this specification, in which like numbers of reference denote like parts wherever they occur,

Fig. 1 is a fragmentary vertical central sectional view of a dispensing machine, such as is disclosed in the aforesaid application for United States patent, Serial No. 205,892, showing it associated with a conveyor and the containers thereon, for the purpose of carrying out the process of the present invention;

Fig. 2 is a horizontal sectional view, taken on the line 2—2 in Fig. 1;

Fig. 3 is a side view of a tablet used in practice of this invention;

Fig. 4 is a fragmentary view showing several positions of a tablet on a slightly inclined plane or spout; and

Fig. 5 is a fragmentary vertical central sectional view of a die and a tablet which is being compressed therein.

The charges of finely divided seasoning or flavoring material may be concreted into individual coherent masses in any suitable manner and may have any suitable shape. However, if the seasoning material, such as salt, pepper and the like, is capable of being formed into the lumps or masses by compression, the operation is preferably carried out by

means of dies of the character shown in Fig. 5. The lower plug 1 in the hole 2 of the die 3 is preferably stationary, but can be adjusted vertically to regulate the depth of the hole, and thereby the quantity of material which can be put thereinto. After the upper plunger 4 has been lifted out of the hole 2, any surplus material above the upper face 5 of the die 3 is removed. When the plunger piston 4 descends, it compresses the comminute or granular material in the cylindrical hole 2 to the proper degree to form a coherent mass of the same in the form of a tablet 6. The preferred form of tablet has a cylindrical face 7 and convex sides 8, the plug 1 and plunger 4 having concave faces 9 to form the convex sides 8. One of the advantages of the disk form of tablet over the spherical form is that the same die may be used to produce tablets of different weights by varying the thickness of the tablet. The advantage of the convex faces 8 of the tablet 6 over the flat sides of the usual form of disk tablet resides in the fact that that tablet 6 can roll on its convex faces 8, as well as on its cylindrical face 7, thereby insuring its passage down a slight incline, as shown in Figure 4; whereas a flat-sided disk must slide on an incline when in its prone position, thereby tending to stick if the incline be too small. When the tablet is deposited on an incline 10, as indicated by the tablet 6 farthest to the right in Fig. 4, its center of gravity will be some distance to the left of the point of engagement of its convex side 8 with the inclined plane 10, thereby causing it to tilt on its convex side 8 until its edge 11 engages the surface 10, as indicated by the tablet at the left of Fig. 4, when it will tumble or rotate on the edge 11 and then roll down the incline on its face 7. Even though the disks 6 could not roll on the faces 8, they would make only a point contact with the plane 10, on which the disks would easily tend to spin and thereby facilitate the descent of the disks or tablets down the incline 10. Best results are secured in preventing jamming in the dispensing machine and in conveying the tablets when the thickness of the disk is substantially equal to their diameter.

The disks or tablets 6 are placed in the hopper 12 of a dispensing machine 13, which may be of any suitable form, but is exemplified by the machine disclosed in applicant's aforesaid prior application for United States Patent Serial 205,892. The machine 13 is stationed alongside a conveyor 14, which is preferably of the endless belt type and carries containers 15 in spaced relation to the dispensing machine 13. The dispensing machine 13 has a rotary member 16 with projections 17 of a star wheel 18 that obstruct their path, so that each receptacle rotates the star wheel 18 clockwise through sixty degrees, since there are six projections 17 thereon. The rotation of the star wheel 18 is communicated through a shaft 19 to a discharger disk 20, which discharges one tablet 6 into the spout 21 each time the star wheel rotates through sixty degrees. The angular position of the star wheel 18 with relation to the discharger disk 20 is such that a container 15 is directly under the spout 21 each time a tablet 6 emerges therefrom to enter the container 15. The containers 15 may be filled with the food product either before or after they pass the tablet dispensing station or the machine 13, but preferably they are filled before receiving the tablets 6. It will be appreciated that the tablets may be dispensed by hand as well as mechanically; but, in either case, the whole charge for each can is dispensed simultaneously, without the possibility of a portion thereof preceding or lagging behind another portion, thereby insuring a precision in dispensing the flavoring material not obtainable when the material is dispensed in granulated form. The tablets 6 are uniform in volume, weight, and shape for a predetermined quantity of food product in each container. When the containers 15 have passed the dispensing station for the tablets, they are closed and sealed in any suitable or common manner.

The advantages of the method of the present invention will be more highly appreciated when this method is contrasted with the methods hitherto prevailing. This is particularly true when salt is the flavoring material, and is used, for instance, to flavor tomatoes.

In that type of canning operation in which the salt is added after the can has been filled, the fact that the tablet does not go into solution until the can is sealed and is being processed, is a most important factor. First, because the tablet goes into solution slowly, and there is at no time a strong brine solution in any part of the can, so that the seed cells are kept intact and are not broken down, and second, no salt is wasted. If, when the plunging device of the closing machine operates, some surplus liquid is expelled, it will contain no salt as the tablet has not as yet dissolved, even partially.

Contrast this with the method of using raw salt or brine. In the first place, raw salt goes into solution immediately, and a strong concentrated brine forms at the top of the can, with several deteriorating results. This strong brine breaks down the seed cells and

ing machine operates. This produces unevenness of salting. This results not only in a loss of salt, but also in deterioration of machinery through the corrosive action of salt on all surrounding canning equipment, and the containers themselves. Just a slight amount of brine spilled on the outside of the cans, will, in the course of a day's operation, so contaminate the retort water that all cans put into this water will be affected, and will become rusty and corrode.

In canning operation in which the salt is deposited into the empty can before the vegetable to be canned is added, the fact that the tablet does not go into solution immediately is an outstanding advantage. The cans, having recently been washed, reach the canning line in a moist condition. Raw salt, promptly dissolves, and the resulting heavy brine solution affects the tin, leaving a dark deposit in the bottom of the can.

Where brine is used in the canning process, the method of depositing a tablet into the can, either filled or empty, and adding hot water to overflow, is infinitely better than the addition of a prepared brine solution, primarily because it affords a uniform degree of saltiness to the pack, whether the pack is of a loose or compact nature. It can readily be seen that more brine will be added to a loosely packed can, if that method is used, than one that is more compact. Then too, brine must be hot when added to the cans, and, as it is made to a certain gravity in tanks considerably removed from the immediate canning line, in the various stages of evaporation it provides a varying degree of saltiness to the product. Adding brine to overflow is wasteful, and extremely harmful to cans and machinery. In some canneries, an attempt is made to recover this overflow brine, but this necessitates a costly installation of special pumps, and, at best, is of doubtful sanitation.

Certain vitamines found in canned foods, when heated in air, are destroyed. For this reason, especially in the production of tomato juice, instead of flavoring and heating in open tanks and then packaging, the present invention contemplates putting the cold juice in cans, adding the salt tablet, exhausting to eliminate air, sealing and then processing. Consequently all valuable vitamines are re-

alt tablet method simplifies the entire operation, eliminates costly tanks, and pipes, and avoids corrosion of ve machinery, but of vastly greater

be made therein without departing from the spirit of this invention or the scope of the following claims.

I claim:

1. In the process of packing food products in containers in which the containers are filled in sequence with the food product partially in solid and partially in liquid state, and in which the contents of the container are subjected to agitation in the canning process subsequent to being filled, that improvement which consists in adding to the container a flavoring in the form of a compacted body having a low solution factor in the liquid in the container, and thereafter sealing the container before any substantial dissolution of the flavoring body.

2. In the process of packing food products in containers in which the containers receive the food product, including a quantity of liquid and in which the contents of the container are subjected to agitation before the containers are capped, that improvement which consists in salting the contents of the container by adding thereto a salt tablet in a highly compacted form of uniform volume, and thereafter sealing the container before any substantial dissolution of the salt tablet occurs.

3. In the process of packing food products in containers in which the food product, partially in solid and partially in liquid form, is delivered to the container to substantially fill the same, that improvement which consists in adding a flavoring to the food product in the form of a closely compacted body of a predetermined weight, and then sealing the container before any substantial dissolution of the flavoring body occurs.

In testimony whereof I hereunto affix my signature.

GERHART S. SUPPIGER.

and thereby the quantity of material which can be put thereinto. After the upper plunger 4 has been lifted out of the hole 2, any surplus material above the upper face 5 of the die 3 is removed. When the plunger piston 4 descends, it compresses the comminute or granular material in the cylindrical hole 2 to the proper degree to form a coherent mass of the same in the form of a tablet 6. The preferred form of tablet has a cylindrical face 7 and convex sides 8, the plug 1 and plunger 4 having concave faces 9 to form the convex sides 8. One of the advantages of the disk form of tablet over the spherical form is that the same die may be used to produce tablets of different weights by varying the thickness of the tablet. The advantage of the convex faces 8 of the tablet 6 over the flat sides of the usual form of disk tablet resides in the fact that that tablet 6 can roll on its convex faces 8, as well as on its cylindrical face 7, thereby insuring its passage down a slight incline, as shown in Figure 4; whereas a flat-sided disk must slide on an incline when in its prone position, thereby tending to stick if the incline be too small. When the tablet is deposited on an incline 10, as indicated by the tablet 6 farthest to the right in Fig. 4, its center of gravity will be some distance to the left of the point of engagement of its convex side 8 with the inclined plane 10, thereby causing it to tilt on its convex side 8 until its edge 11 engages the surface 10, as indicated by the tablet at the left of Fig. 4, when it will tumble or rotate on the edge 11 and then roll down the incline on its face 7. Even though the disks 6 could not roll on the faces 8, they would make only a point contact with the plane 10, on which the disks would easily tend to spin and thereby facilitate the descent of the disks or tablets down the incline 10. Best results are secured in preventing jamming in the dispensing machine and in conveying the tablets when the thickness of the disk is substantially equal to their diameter.

The disks or tablets 6 are placed in the hopper 12 of a dispensing machine 13, which may be of any suitable form, but is exemplified by the machine disclosed in applicant's aforesaid prior application for United States Patent Serial 205,892. The machine 13 is stationed alongside a conveyor 14, which is preferably of the endless belt type, and carries cans or receptacles 15 in sequence past the machine 13, preferably between guides 16, that prevent lateral displacement of the receptacles or containers 15. Assuming that the containers 15 are moving away from the observer, Figure 1, they will engage the projection on the [illegible] communicated through a shaft 19 to a discharger disk 20, which discharges one tablet 6 into the spout 21 each time the star wheel rotates through sixty degrees. The angular position of the star wheel 18 with relation to the discharger disk 20 is such that a container 15 is directly under the spout 21 each time a tablet 6 emerges therefrom to enter the container 15. The containers 15 may be filled with the food product either before or after they pass the tablet dispensing station or the machine 13, but preferably they are filled before receiving the tablets 6. It will be appreciated that the tablets may be dispensed by hand as well as mechanically; but, in either case, the whole charge for each can is dispensed simultaneously, without the possibility of a portion thereof preceding or lagging behind another portion, thereby insuring a precision in dispensing the flavoring material not obtainable when the material is dispensed in granulated form. The tablets 6 are uniform in volume, weight, and shape for a predetermined quantity of food product in each container. When the containers 15 have passed the dispensing station for the tablets, they are closed and sealed in any suitable or common manner.

The advantages of the method of the present invention will be more highly appreciated when this method is contrasted with methods hitherto prevailing. This is particularly true when salt is the flavoring material, and is used, for instance, to flavor tomatoes.

In that type of canning operation in which the salt is added after the can has been filled, the fact that the tablet does not go into solution until the can is sealed and is being processed, is a most important factor. First, because the tablet goes into solution slowly, and there is at no time a strong brine solution in any part of the can, so that the seed cells are kept intact and are not broken down, and second, no salt is wasted. If, when the plunging device of the closing machine operates, some surplus liquid is expelled, it will contain no salt as the tablet has not as yet dissolved, even partially.

Contrast this with the method of using raw salt or brine. In the first place, raw salt goes into solution immediately, and a strong concentrated brine forms at the top of the can, with several deteriorating results. This strong brine breaks down the seed cells and the color as well, thereby materially decreasing the value of the product. Then too, the fact that the raw salt has gone immediately into solution and has remained at the top of the can will cause a great deal of the salt to be eliminated when the plunger of the closing [illegible] salt on all surrounding canning equipment, and the containers themselves. Just a slight amount of brine spilled on the outside of the cans, will, in the course of a day's operation, so contaminate the retort water that all cans put into this water will be affected, and will become rusty and corrode.

In canning operation in which the salt is deposited into the empty can before the vegetable to be canned is added, the fact that the tablet does not go into solution immediately is an outstanding advantage. The cans, having recently been washed, reach the canning line in a moist condition. Raw salt, promptly dissolves, and the resulting heavy brine solution affects the tin, leaving a dark deposit in the bottom of the can.

Where brine is used in the canning process, the method of depositing a tablet into the can, either filled or empty, and adding hot water to overflow, is infinitely better than the addition of a prepared brine solution, primarily because it affords a uniform degree of saltiness to the pack, whether the pack is of a loose or compact nature. It can readily be seen that more brine will be added to a loosely packed can, if that method is used, than one that is more compact. Then too, brine must be hot when added to the cans, and, as it is made to a certain gravity in tanks considerably removed from the immediate canning line, in the various stages of evaporation it provides a varying degree of saltiness to the product. Adding brine to overflow is wasteful, and extremely harmful to cans and machinery. In some canneries, an attempt is made to recover this overflow brine, but this necessitates a costly installation of special pumps, and, at best, is of doubtful sanitation.

Certain vitamines found in canned foods, when heated in air, are destroyed. For this reason, especially in the production of tomato juice, instead of flavoring and heating in open tanks and then packaging, the present invention contemplates putting the cold juice in cans, adding the salt tablet, exhausting to eliminate air, sealing and then processing. Consequently all valuable vitamines are retained.

The salt tablet method simplifies the entire salting operation, eliminates costly tanks, pumps and pipes, and avoids corrosion of expensive machinery, but of vastly greater importance is the assurance that the accurately weighed tablet that has been added to the product, will mean an absolutely uniform degree of saltiness in each and every can.

Having thus fully described this invention, I hereby reserve the benefit of all changes in form, arrangement, order, or use of parts, as it is evident that many minor changes may

1. In the process of packing food products in containers in which the containers are filled in sequence with the food product partially in solid and partially in liquid state, and in which the contents of the container are subjected to agitation in the canning process subsequent to being filled, that improvement which consists in adding to the container a flavoring in the form of a compacted body having a low solution factor in the liquid in the container, and thereafter sealing the container before any substantial dissolution of the flavoring body.

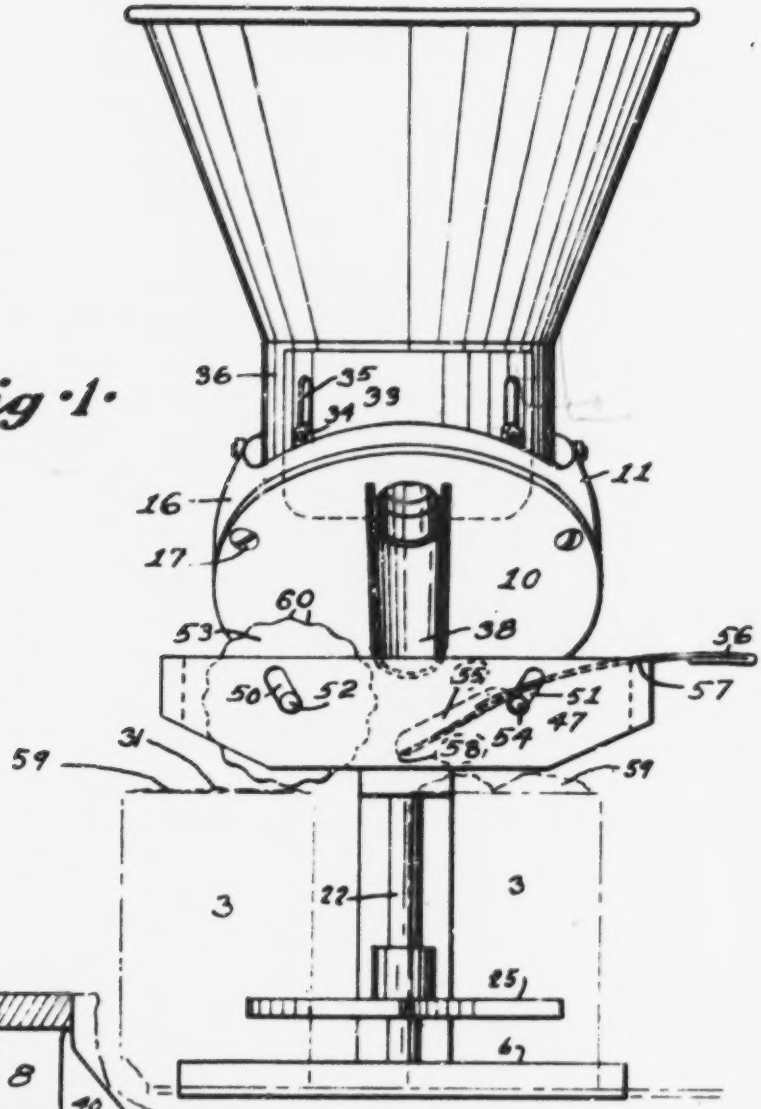
2. In the process of packing food products in containers in which the containers receive the food product, including a quantity of liquid and in which the contents of the container are subjected to agitation before the containers are capped, that improvement which consists in salting the contents of the container by adding thereto a salt tablet in a highly compacted form of uniform volume, and thereafter sealing the container before any substantial dissolution of the salt tablet occurs.

3. In the process of packing food products in containers in which the food product, partially in solid and partially in liquid form, is delivered to the container to substantially fill the same, that improvement which consists in adding a flavoring to the food product in the form of a closely compacted body of a predetermined weight, and then sealing the container before any substantial dissolution of the flavoring body occurs.

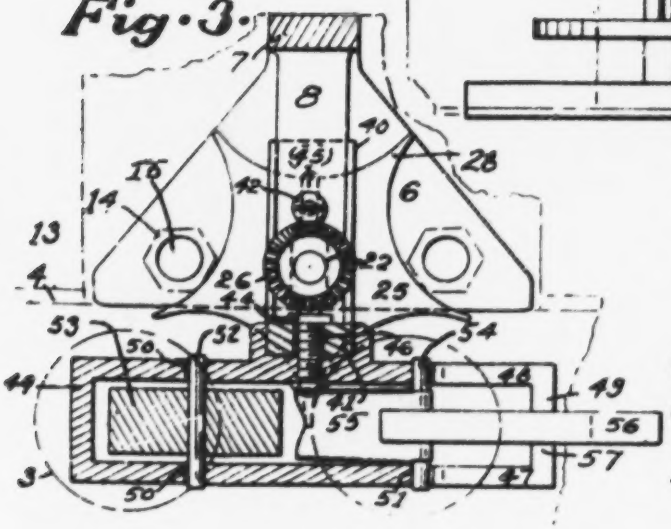
In testimony whereof I hereunto affix my signature.

GERHART S. SUPPIGER.

Fig·1·



Fig·3·



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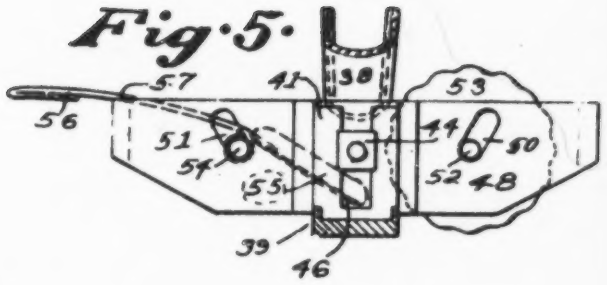
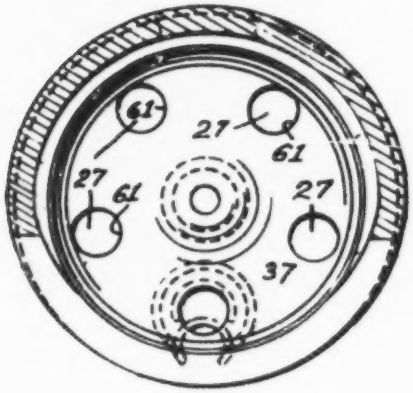
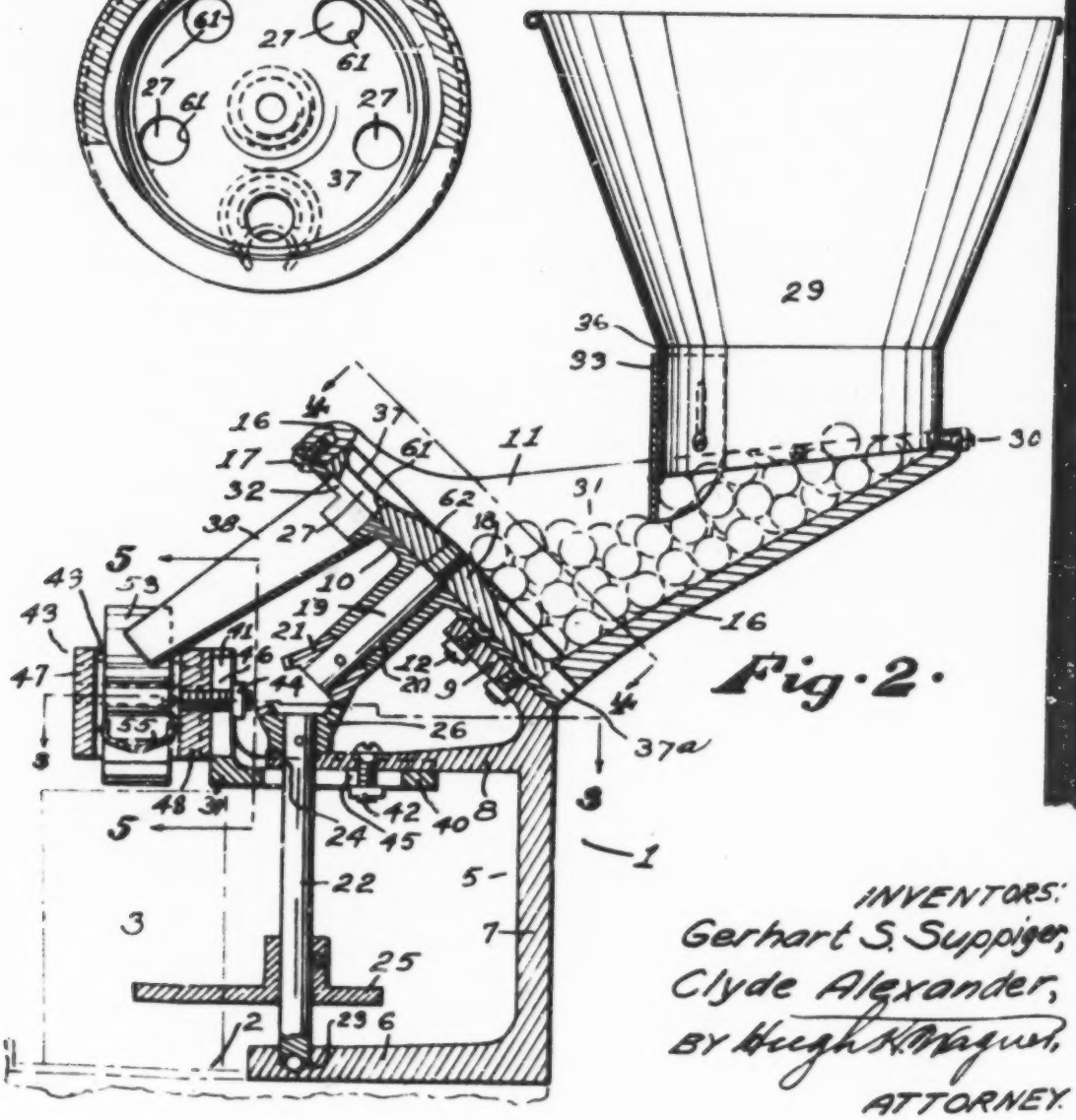
Fig·5.



Fig·4.





Fig·2.

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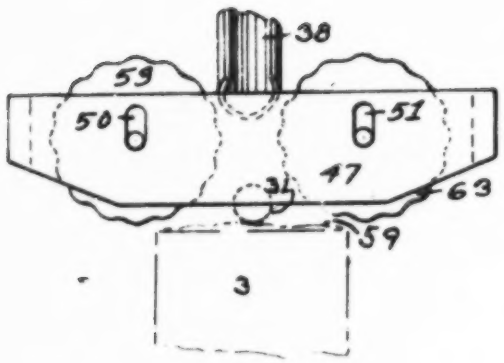

Fig. 6.

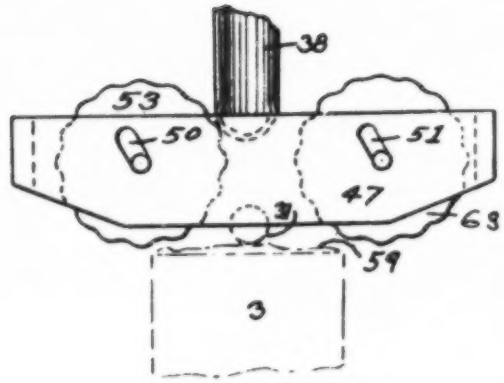

Fig. 7.

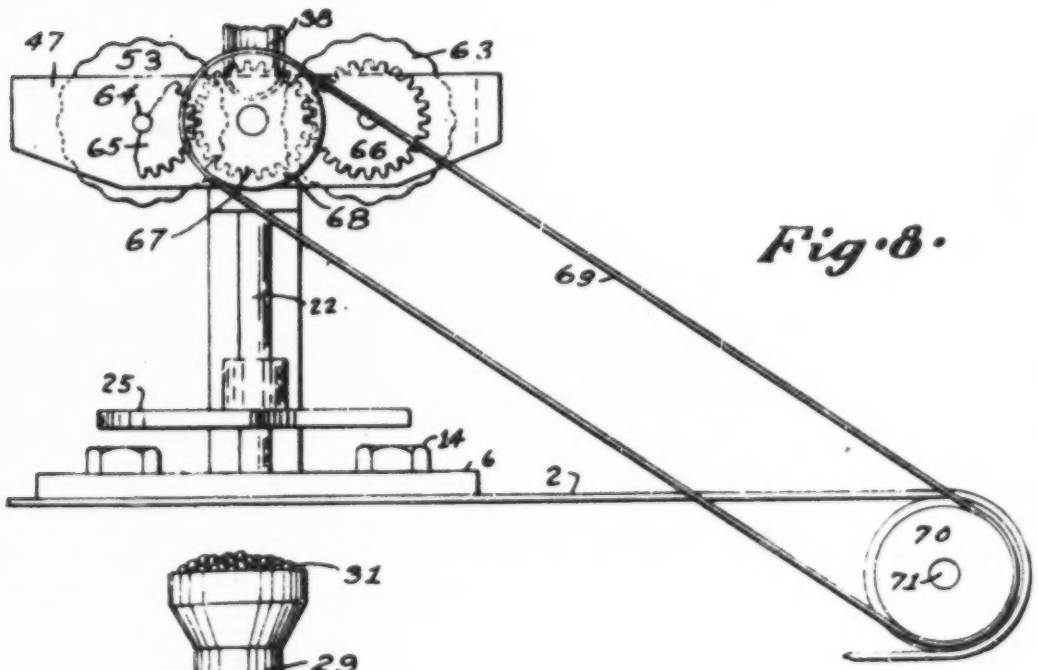

Fig. 8.

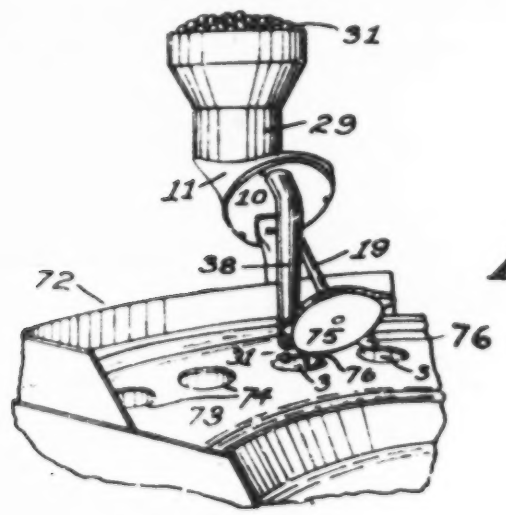

Fig. 9.

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UNITED STATES PATENT OFFICE

1,945,337

DISPENSING APPARATUS FOR DISPENSING TABLETS TO HEAPING FULL CONTAINERS

Gerhart S. Suppiger and Clyde Alexander, Belleville, Ill., assignors to Scientific Tablet Company, Belleville, Ill., a corporation of Illinois

Application March 13, 1931. Serial No. 522,215

4 Claims. (Cl. 226—2)

This invention relates to a process of adding or dispensing flavoring or seasoning tablets to a heaping mass of a food product or to a container heaping full of such a product. The invention relates, also, to a dispensing apparatus particularly suited for use in carrying out the said process, although, in certain aspects, this apparatus is capable of a much more extended and general use. The invention relates particularly to improvements on the apparatuses and methods disclosed in the present inventors' prior joint application for United States patent, Serial 205,892, filed July 15, 1927, and in the application of the present inventor, Gerhart S. Suppiger, for United States patent, Serial 506,079, filed January 2, 1931.

The dispensing apparatus shown in the aforesaid prior applications for United States patents includes a hopper having its bottom closed by a pair of horizontal plates superposed in spaced relation to one another, and a rotary discharger disk intermediate said plates, the discharger disk having one or more perforations arranged at equal angular intervals and at the same distances from the center or axis of the disk, which perforations are successively brought into registration with a discharge opening in the lower plate and with an opening in the upper plate, the openings in the upper and lower plates being out of registration or alinement with each other. Otherwise stated, only one dispensable body can be discharged at a time, because the upper plate functions to close the upper end of a perforation in the discharger disk when such perforation is in register with the discharge opening in the lower plate, whereby dispensable bodies in the hopper are prevented from immediately following the dispensable body that is dropping from the perforation in the discharger disk into the aligned discharger opening in the lower plate. However, should a broken tablet or dispensable piece or a foreign body of improper size or shape find its way into the hopper, the perforation in the discharger disk might become overfilled and extend up into the opening in the upper plate, and thereby cause jamming of the discharger disk and derangement of the dispensing apparatus. Accordingly, one purpose of the present invention is to prevent such jamming and derangement by eliminating the upper plate and substituting therefor other provisions for assuring that only a predetermined number of dispensable bodies can pass at each discharging interval through the discharge opening in the lower plate.

In certain canning operations, it is the practice to fill the cans heaping full, and then to add the flavoring or seasoning tablet thereto. However, when a tablet is dropped on the heaping contents of such a can, there is a tendency for the tablet to roll off the contents and the can. Accordingly, another purpose of the present invention is to provide a method and means for depositing a tablet on such overfilled cans so that the tablet can not roll off.

Other objects, advantages and desirable features of the invention will appear in the course of the following description of divers illustrative embodiments of the spirit thereof.

In the accompanying drawings forming part of this specification, in which like numbers of reference denote like parts wherever they occur,

Figure 1 is a front elevation of one form of dispensing machine made in accordance with the present invention, embodying one form of driving means and one form of means for depositing a tablet on an overfilled can so that the tablet can not roll off;

Figure 2 is a vertical central sectional view of the same, looking from the right hand side of Figure 1;

Figure 3 is a horizontal sectional view, taken on the line 3—3 in Figure 2;

Figure 4 is a transverse sectional view taken on the inclined plane indicated by the line 4—4 in Figure 2;

Figure 5 is a vertical sectional view taken on the line 5—5 in Figure 2;

Figures 6, 7, and 8 are fragmentary front elevations of divers other forms of means for depositing a tablet on an overfilled container so that the tablet can not roll off; and

Figure 9 is a perspective view of another form of the machine exhibiting a different means for driving it.

The dispensing machine 1 shown in Figures 1 to 5, inclusive, is stationed alongside a conveyor 2, which is preferably of the endless belt type and carries cans or receptacles 3 in sequence past the machine 1, preferably, although not necessarily, between guides 4, that prevent lateral displacement of the receptacles or containers 3. The frame or standard 5 of the dispensing machine 1 comprises, preferably in the form of a single casting, a base 6, a post 7 rising from the rear end of the base 6, a horizontal forwardly projecting arm 8 disposed a suitable distance above the base 6, and a forwardly inclining arm 9 at the upper end of the post 7. The forwardly inclining bottom plate 10 of a rearwardly inclined hopper 11 is secured to the upper face of the in-

clined arm 9 by bolts 12. The machine is mounted on the frame 13 of the conveyor 2 by suitable bolts 14 passing through the holes 15 in the base 6. The sloping wall 16 of the hopper 11 is secured to the bottom plate 10 by means of screws 17. A rotary discharging plate or disk 18 covers the bottom 10 and is affixed to the upper end of a shaft 19, that passes through a bearing 20 on the underside of the bottom plate 10, and that has affixed to its lower end a bevel pinion 21. A vertical shaft 22 is journaled at its lower end in a step bearing 23 and adjacent its upper end in a bearing 24 in the arm 8. A star wheel 25 is affixed to the lower portion of the shaft 22 to drive the latter, and the rotation of the shaft 22 drives the shaft 19 to rotate the disk 18 through the bevel pinion 21 and a bevel pinion 26 in mesh with the latter and affixed to the shaft 22. The disk 18 is provided with a series of perforations or openings 27, equal in number to the projections or teeth 28 of the star wheel 25, provided the pinions 21 and 26 have the same pitch diameter and the same number of teeth, which is the case in the present embodiment. A second hopper 29 feeds vertically into the rear and upper end of the first mentioned hopper 11, being secured thereto by bolts 30. The feed of the hopper 29 into the hopper 11 is regulated so that the mass or accumulation of the tablets or dispensable articles 31 can not rise high enough to enter a perforation 27 in the disk 18 when such perforation is alined or in register with the discharging opening or perforations 32 in the bottom plate 10. The said regulation is effected by adjusting the height of a gate or plate valve 33, that limits the flow of dispensable bodies 31 toward the disk 18. The plate 33 is held in its adjusted position on the front side of the lower end of the hopper 29 by means of bolts 34, that pass through vertical slots 35 in the plate 33 and through the wall 36 of the hopper 29. An annular groove 37 in the upper face of the disk 18 facilitates the flow of dispensable bodies 31 into the openings or recesses 27. The very slight attrition of the dispensable bodies 31 in their passage through the hopper may, after long continued operation of the machine, cause an accumulation of very fine or pulverulent fragments of these bodies between the disk 18 and the adjacent or underlying portions of the hopper, which might cause excessive friction or jamming of the disk thereat. To obviate the possibility of such an occurrence, the lowest portion of the inclined bottom edge of the wall is provided with a notch or opening 37ª (Figure 2) through which such pulverulent material will fall out of the machine. The opening 32 in the bottom plate 10 discharges into a spout 38.

An L-shaped bracket 39, comprising a horizontal arm 40 and an arm 41 that rises vertically from the anterior end of the arm 40, has its horizontal arm 40 secured by a bolt 42 to the underside of the arm 8 of the standard 1, and its vertical arm 41 has secured to its anterior side a frame 43 by means of a bolt 44. Bolt 42 passes through a lon-

spout 38, and incline away from each other, as best shown in Figures 1 and 5. Assuming that the conveyer 2 is moving from right to left, the left hand slots 50 will support the pintle 52 of a roller 53, and the right hand slots 51 will support the pintle 54 of a chute or conduit 55. The chute 55 slopes downwardly from the pintle 54 to a point beneath the lower end of the spout 38, and is normally maintained in its elevated position about the pivot 54 by the preponderant counter-moment of a weighted arm 56, whose descent is limited by its engagement with the upper edge 57 of the adjacent end wall 49. The preponderance in moment of the arm 56 over the counter-moment of the chute 55 is limited to a value such that the lower end 58 of the chute 55 can descend under the force of a tablet that has dropped thereon after the tablet's emergence from the lower end of the spout 38. The inclination of the chute 55 and the height of its lower end 58 can be adjusted by bending the arm 56 in the appropriate direction between its pivot 54 and the edge 57 of the right end wall 49, the arm being preferably formed of wrought iron or other material having a similar degree of resistance to flexure and of such a width and thickness that it can not bend under the stresses imparted thereto during the operation of the machine, but only when it is intentionally adjusted. The roller 53 is driven by the engagement of the heaping contents 59 of the receptacles 3 with the under portion of its periphery, and, in order to minimize slippage of the contents against the roller's periphery, the latter is preferably provided with corrugations 60.

When the hopper 29 is supplied with tablets 31, the latter flow down into the hopper 11 and toward the disk 18 until they occupy the position shown in Figure 2, the height to which the mass of tablets 31 can rise along the disk 18 being determined by the vertical position of the outlet gate 33 on the hopper 29. As the conveyor 2 travels from right to left (Figures 1 and 3), the cans or containers 3 engage the teeth 28 of the star wheel 25 and rotate the latter, and consequently the disk 18, in a clockwise direction, so that the right half of the disk rises as the left half descends. It will be observed that the side 61 of each hole 27 slopes downwardly toward the bottom plate 10, thereby facilitating the entrance of the tablets 31 into the holes 27, and preventing the tablets from rolling out of the holes as the latter lift them above the mass or pile of tablets 31 that lie against the rising half of the disk. Attention is directed to the fact that since the upper face 62 of the disk 18 is not horizontal, and the height of the mass of tablets in the hopper 11 is limited, no tablets can remain superposed on the tablets 31 in the holes 27 at the time of the alinement of each of said holes with the hole 32 in the bottom plate 10. Hence this arrangement obviates the need of a plate above the disk 18 (as is necessary when the disk is horizontal) for assuring that only a predetermined number of dispensable bodies 18 can pass each discharging interval through the discharge opening 32 in the lower plate 10.

The tablet 31 discharged through the open-

ing 38 and the contents of the container 3, while the roller 53, as the receptacle 3 continues to advance, presses the tablet down against the contents to facilitate the lodgement of the tablet therein, while, also, depressing the heaping portion of the contents, so that the tablet can not roll off. It will be appreciated that the yieldable chute 55 minimizes the possibility of a rebound of the dropping tablet, and that, also, in deflecting the tablet forwardly so as to move with the cam, minimizes the possibility of the tablet missing the can. Furthermore, the walk 47 and 48 and the chute 55 and roller 53 co-operate to confine the tablet within proper bounds in the course of its descent into the receptacle 3 or upon the contents 59 of the latter. The roller 53 should have sufficient weight to depress the heap 59 of the food product, which may, for instance, be a tomato floating in the can so as to extend above the top thereof. However, the weight of the roller involves the moment of inertia of the roller, which is a desideratum, particularly when the conveyor travels comparatively fast, on account of the fact that the roller 53 is actuated by the engagement of the heap 59 of the contents of the receptacles 3. It will, therefore, be appreciated that, if the roller 53 is too heavy, it might fail to turn, and would scrape over the contents, tending to spill them on the conveyor and possibly, also, to overturn the receptacle. The slots 50 are provided to allow the roller 53 to be lifted by the heap 59 in case the latter does not yield readily to the weight of the roller. The slots 50 are preferably inclined in the direction of travel of the receptacles 3, thereby enabling the heap 59 to lift the roller 53 and rotate it more easily under the forward movement of the conveyor. The holes 51 need not be elongated to facilitate the functioning of the chute 55, but are preferably elongated and inclined in the opposite direction to that of the slots 50, so that the roller 53 and chute 55 can be easily interchanged to accommodate the machine to a conveyor traveling in the opposite direction, that is, from left to right.

The forms of the invention shown in Figures 6, 7, and 8 substitute a roller 63 for the chute 55. Both rollers 53 and 63 co-operate with the walls 47 and 48 to confine the tablet 31 within proper bounds in the course of the tablet's descent into the container beneath. Both rollers function to depress the heap 59, while the roller 53 in addition thereto, also, presses the tablet against the heap. The forms of the invention shown in Figures 6 and 8 may be employed in connection with a conveyor running in either direction, while the form of Figure 7 can be used only with a conveyor that travels from right to left, on account of the inclination of the slots 50 and 51 toward the left. However, the conveyor for the form of Figure 6 must run comparatively more slowly on account of the vertical elongation of its slots. The form of Figure 3 may be provided with ordinary journal bearings 64 instead of slots, since the rollers are positively driven through gears 65, 66, and 67, pulley 68, belt 69, and a pulley 70 on the conveyor shaft 71. The form of the invention shown in Figure 9 omits the can-operated drive for the discharging disk 18, the machine being mounted adjacent a filling machine 72 of a well known type that comprises a rotary filling table 73, having openings 74 therein that are alined with empty cans or containers 3 traveling thereunder with the rotary movement of the table, and the rotation of the discharging disk of the tablet dispensing machine being effected by a wheel 75, affixed to the lower end of the inclined discharging disk shaft 19 and having teeth 76 that are engaged by the edges of the openings 74, the tablets 31 being discharged through a spout 38 through the openings 74 into the unfilled cans 3 beneath the table 73. Of course, since the cans 3 are not filled, no rollers 53 or chutes 55 are needed, and so are omitted from this form of tablet dispensing machine. It will be quite apparent, also, that the cans 3 need not be entirely empty at the time of their passing under the spout of the machine of Figure 9, but may be partly filled, and the filling completed after the tablet has been deposited in the can.

Having thus fully described this invention, we hereby reserve the benefit of all changes in form, arrangement, order, or use of parts, as it is evident that many minor changes may be made therein without departing from the spirit of this invention or the scope of the following claims,

We claim:

1. In a dispensing apparatus including means for depositing a tablet upon the contents of a traveling container, the combination with a roller arranged above the course of travel of the container adapted to be engaged by the contents of the container, of a support for said roller whereby said roller may be shifted in an inclined forward direction.

2. In an apparatus for depositing a tablet on a traveling body, the combination of an inclined discharge conduit extending downwardly in the direction of the line of travel of the body, and a tiltable support for said conduit arranged to support said conduit so that the lower end thereof is depressed by the weight of a tablet thereon.

3. In an apparatus for depositing a tablet on a traveling body, the combination of an inclined discharge conduit extending downwardly and in the direction of travel of the body, a pivotal support for said conduit, and means for adjusting the normal position of the conduit vertically.

4. In an apparatus of the class described, the combination with means for moving filled containers in succession, of a pivoted chute directed downwardly toward the line of travel of the container and adapted to deliver tablets in succession, and a mechanical depressing device adapted to engage the contents of the container and to depress the tablet into the body thereof after the same has been deposited upon the upper surface of the contents of the container.

GERHART S. SUPPIGER.
CLYDE ALEXANDER.

19, that passes through a bearing [illegible] derside of the bottom plate 10, and that has affixed to its lower end a bevel pinion 21. A vertical shaft 22 is journaled at its lower end in a step bearing 23 and adjacent its upper end in a bearing 24 in the arm 8. A star wheel 25 is affixed to the lower portion of the shaft 22 to drive the latter, and the rotation of the shaft 22 drives the shaft 19 to rotate the disk 18 through the bevel pinion 21 and a bevel pinion 26 in mesh with the latter and affixed to the shaft 22. The disk 18 is provided with a series of perforations or openings 27, equal in number to the projections or teeth 28 of the star wheel 25, provided the pinions 21 and 26 have the same pitch diameter and the same number of teeth, which is the case in the present embodiment. A second hopper 29 feeds vertically into the rear and upper end of the first mentioned hopper 11, being secured thereto by bolts 30. The feed of the hopper 29 into the hopper 11 is regulated so that the mass or accumulation of the tablets or dispensable articles 31 can not rise high enough to enter a perforation 27 in the disk 18 when such perforation is alined or in register with the discharging opening or perforations 32 in the bottom plate 10. The said regulation is effected by adjusting the height of a gate or plate valve 33, that limits the flow of dispensable bodies 31 toward the disk 18. The plate 33 is held in its adjusted position on the front side of the lower end of the hopper 29 by means of bolts 34, that pass through vertical slots 35 in the plate 33 and through the wall 36 of the hopper 29. An annular groove 37 in the upper face of the disk 18 facilitates the flow of dispensable bodies 31 into the openings or recesses 27. The very slight attrition of the dispensable bodies 31 in their passage through the hopper may, after long continued operation of the machine, cause an accumulation of very fine or pulverulent fragments of these bodies between the disk 18 and the adjacent or underlying portions of the hopper, which might cause excessive friction or jamming of the disk thereat. To obviate the possibility of such an occurrence, the lowest portion of the inclined bottom edge of the wall is provided with a notch or opening 37^a (Figure 2) through which such pulverulent material will fall out of the machine. The opening 32 in the bottom plate 10 discharges into a spout 38.

An L-shaped bracket 39, comprising a horizontal arm 40 and an arm 41 that rises vertically from the anterior end of the arm 40, has its horizontal arm 40 secured by a bolt 42 to the underside of the arm 8 of the standard 1, and its vertical arm 41 has secured to its anterior side a frame 43 by means of a bolt 44. Bolt 42 passes through a longitudinal slot 45 in the arm 40, and bolt 44 passes through a longitudinal slot 46 in the arm 41, so that these slots permit the frame 43 to be adjusted both vertically and from front to rear. The frame 43 comprises an anterior wall 47, a posterior wall 48, and end walls 49. The anterior wall 47 and the posterior wall 48 each have a pair of slots 50 and 51 that are alined with the pair of slots 50 and 51 in the other. The slots 50 and 51 in each wall are disposed on opposite sides of the central

[illegible] mally maintained in its elevated position about the pivot 54 by the preponderant counter-moment of a weighted arm 56, whose descent is limited by its engagement with the upper edge 57 of the adjacent end wall 49. The preponderance in moment of the arm 56 over the counter-moment of the chute 55 is limited to a value such that the lower end 58 of the chute 55 can descend under the force of a tablet that has dropped thereon after the tablet's emergence from the lower end of the spout 38. The inclination of the chute 55 and the height of its lower end 58 can be adjusted by bending the arm 56 in the appropriate direction between its pivot 54 and the edge 57 of the right end wall 49, the arm being preferably formed of wrought iron or other material having a similar degree of resistance to flexure and of such a width and thickness that it can not bend under the stresses imparted thereto during the operation of the machine, but only when it is intentionally adjusted. The roller 53 is driven by the engagement of the heaping contents 59 of the receptacles 3 with the under portion of its periphery, and, in order to minimize slippage of the contents against the roller's periphery, the latter is preferably provided with corrugations 60.

When the hopper 29 is supplied with tablets 31, the latter flow down into the hopper 11 and toward the disk 18 until they occupy the position shown in Figure 2, the height to which the mass of tablets 31 can rise along the disk 18 being determined by the vertical position of the outlet gate 33 on the hopper 29. As the conveyor 2 travels from right to left (Figures 1 and 3), the cans or containers 3 engage the teeth 28 of the star wheel 25 and rotate the latter, and consequently the disk 18, in a clockwise direction, so that the right half of the disk rises as the left half descends. It will be observed that the side 61 of each hole 27 slopes downwardly toward the bottom plate 10, thereby facilitating the entrance of the tablets 31 into the holes 27, and preventing the tablets from rolling out of the holes as the latter lift them above the mass or pile of tablets 31 that lie against the rising half of the disk. Attention is directed to the fact that since the upper face 62 of the disk 18 is not horizontal, and the height of the mass of tablets in the hopper 11 is limited, no tablets can remain superposed on the tablets 31 in the holes 27 at the time of the alinement of each of said holes with the hole 32 in the bottom plate 10. Hence this arrangement obviates the need of a plate above the disk 18 (as is necessary when the disk is horizontal) for assuring that only a predetermined number of dispensable bodies 18 can pass each discharging interval through the discharge opening 32 in the lower plate 10.

The tablet 31 discharged through the opening 32 passes down the conduit or spout 38 and drops upon the chute 55, depressing the lower end of the chute while the latter at the same time deflects the dropped tablet toward the left, in the direction of travel of the containers 3, the particular container that is actuating the star wheel having meanwhile advanced to a point directly under the gap between the chute 55 and roller 53. The chute 55 directs the tablet between the

forwardly so as to move with the cam, minimizes the possibility of the tablet missing the can. Furthermore, the walk 47 and 48 and the chute 55 and roller 53 co-operate to confine the tablet within proper bounds in the course of its descent into the receptacle 3 or upon the contents 59 of the latter. The roller 53 should have sufficient weight to depress the heap 59 of the food product, which may, for instance, be a tomato floating in the can so as to extend above the top thereof. However, the weight of the roller involves the moment of inertia of the roller, which is a desideratum, particularly when the conveyor travels comparatively fast, on account of the fact that the roller 53 is actuated by the engagement of the heap 59 of the contents of the receptacles 3. It will, therefore, be appreciated that, if the roller 53 is too heavy, it might fail to turn, and would scrape over the contents, tending to spill them on the conveyor and possibly, also, to overturn the receptacle. The slots 50 are provided to allow the roller 53 to be lifted by the heap 59 in case the latter does not yield readily to the weight of the roller. The slots 50 are preferably inclined in the direction of travel of the receptacles 3, thereby enabling the heap 59 to lift the roller 53 and rotate it more easily under the forward movement of the conveyor. The holes 51 need not be elongated to facilitate the functioning of the chute 55, but are preferably elongated and inclined in the opposite direction to that of the slots 50, so that the roller 53 and chute 55 can be easily interchanged to accommodate the machine to a conveyor traveling in the opposite direction, that is, from left to right.

The forms of the invention shown in Figures 6, 7, and 8 substitute a roller 63 for the chute 55. Both rollers 53 and 63 co-operate with the walls 47 and 48 to confine the tablet 31 within proper bounds in the course of the tablet's descent into the container beneath. Both rollers function to depress the heap 59, while the roller 53 in addition thereto, also, presses the tablet against the heap. The forms of the invention shown in Figures 6 and 8 may be employed in connection with a conveyor running in either direction, while the form of Figure 7 can be used only with a conveyor that travels from right to left, on account of the inclination of the slots 50 and 51 toward the left. However, the conveyor for the form of Figure 6 must run comparatively more slowly on account of the vertical elongation of its slots. The form of Figure 8 may be provided with ordinary journal bearings 64 instead of slots, since the rollers are positively driven through gears 65, 66, and 67, pulley 68, belt 69, and a pulley 70

[illegible] of the tablet dispensing machine being effected by a wheel 75, affixed to the lower end of the inclined discharging disk shaft 19 and having teeth 76 that are engaged by the edges of the openings 74, the tablets 31 being discharged through a spout 38 through the openings 74 into the unfilled cans 3 beneath the table 73. Of course, since the cans 3 are not filled, no rollers 53 or chutes 55 are needed, and so are omitted from this form of tablet dispensing machine. It will be quite apparent, also, that the cans 3 need not be entirely empty at the time of their passing under the spout of the machine of Figure 9, but may be partly filled, and the filling completed after the tablet has been deposited in the can.

Having thus fully described this invention, we hereby reserve the benefit of all changes in form, arrangement, order, or use of parts, as it is evident that many minor changes may be made therein without departing from the spirit of this invention or the scope of the following claims,

We claim:

1. In a dispensing apparatus including means for depositing a tablet upon the contents of a traveling container, the combination with a roller arranged above the course of travel of the container adapted to be engaged by the contents of the container, of a support for said roller whereby said roller may be shifted in an inclined forward direction.

2. In an apparatus for depositing a tablet on a traveling body, the combination of an inclined discharge conduit extending downwardly in the direction of the line of travel of the body, and a tiltable support for said conduit arranged to support said conduit so that the lower end thereof is depressed by the weight of a tablet thereon.

3. In an apparatus for depositing a tablet on a traveling body, the combination of an inclined discharge conduit extending downwardly and in the direction of travel of the body, a pivotal support for said conduit, and means for adjusting the normal position of the conduit vertically.

4. In an apparatus of the class described, the combination with means for moving filled containers in succession, of a pivoted chute directed downwardly toward the line of travel of the container and adapted to deliver tablets in succession, and a mechanical depressing device adapted to engage the contents of the container and to depress the tablet into the body thereof after the same has been deposited upon the upper surface of the contents of the container.

GERHART S. SUPPIGER.
CLYDE ALEXANDER.

142 Northern District of Illinois, } ss.
Eastern Division. }

I, Hoyt King, Clerk of the District Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record made in accordance with Praecipe filed in this Court in the cause entitled The G. S. Suppiger Company, a corporation of Delaware *vs* Morton Salt Company, a corporation of Illinois, No. 245, as the same appear from the original records and files thereof, now remaining in my custody and control.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office, in the City of Chicago, in said District, this 3rd day of June, A. D. 1940.

(Seal)

Hoyt King,
Clerk.

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of the printed record, printed under my supervision and filed on the ninth day of July, 1940, in the following entitled cause:

Cause No. 7356

The G. S. Suppiger Company, a corporation of Delaware,

Plaintiff-Appellant,

vs.

Morton Salt Company, a corporation of Illinois,

Defendant-Appellee,

as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 27th day of March, A. D. 1941.

(Seal)

KENNETH J. CARRICK,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit held in the City of Chicago and begun on the fifth day of October, in the year of our Lord one thousand nine hundred and thirty-nine, and of our Independence the one hundred and sixty-fourth.

The G. S. Suppiger Company, a corporation of Delaware, *Plaintiff-Appellant,* *vs.* Morton Salt Company, a corporation of Illinois, *Defendant-Appellee.*	Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division

7356

And, to-wit: On the seventh day of June, 1940, there was filed in the office of the Clerk of this Court, an appearance of counsel for appellant, which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 7356. October Term, 19.....

The G. S. Suppiger Company, a corporation of Delaware,

Appellant,

vs.

Morton Salt Company, a corporation of Illinois,

Appellee.

The Clerk will enter my appearance as counsel for the Appellant.

Robert H. Wendt,
3105 The Field Bldg.,
Chicago, Ill.

Endorsed: Filed June 7, 1940. Kenneth J. Carrick, Clerk.

And afterwards, to-wit: On the nineteenth day of August, 1940, there was filed in the office of the Clerk of this Court, an appearance of counsel for appellee, which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Cause No. 7356

G. F. Suppiger Co.

vs.

Morton Salt Co.

The Clerk will enter our appearance as counsel for Appellee.

Clarence E. Mehlhope,
38 S. Dearborn St., Chicago, Ill.

Clarence F. Poole,
38 S. Dearborn St., Chicago, Ill.

Endorsed: Filed Aug. 19, 1940. Kenneth J. Carrick, Clerk.

And afterwards, to-wit: On the twelfth day of October, 1940, there was filed in the office of the Clerk of this Court, a certificate to exhibit, which said certificate is in the words and figures following, to-wit:

Northern District of Illinois, } ss. 7356
Eastern Division.

I, Hoyt King, Clerk of the District Court of the United States for the Northern District of Illinois, do hereby certify that I herewith transmit to the United Circuit Court of Appeals for the Seventh Circuit certain original Exhibits in the case entitled The G. S. Suppiger Co., *vs.* Morton Salt Co., Civil No. 245, said Exhibits are marked as follows, to-wit:

Defendant's Exhibit No. 13—Metal tag (with correspondence regarding same attached).

In Testimony Whereof I have hereunto set my hand and affixed the seal of said Court at my office, in the City of Chicago, in said District this 11th day of October, A. D. 1940.

Hoyt King,
(Seal) *Clerk.*

Endorsed: Filed Octo. 12, 1940. Kenneth J. Carrick, Clerk.

And afterwards, to-wit: On the nineteenth day of November, 1940, the following further proceedings were had and entered of record, to-wit:

Tuesday, November 19, 1940.

Court met pursuant to adjournment.

Before:

Hon. Evan A. Evans, Circuit Judge.
Hon. Otto Kerner, Circuit Judge.
Hon. Walter C. Lindley, District Judge.

The G. S. Suppiger Company, a corporation of Delaware, *Plaintiff-Appellant,* *vs.* Morton Salt Company, a corporation of Illinois, *Defendant-Appellee.*	Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

7356

Now this day come the parties by their counsel, and this cause comes on to be heard on the transcript of the record and the briefs of counsel, and on oral argument by Mr. Estill E. Ezell, counsel for appellant, and by Mr. Clarence E. Mehlhope, counsel for appellee, and the Court takes this matter under advisement.

And afterwards, to-wit: On the fourteenth day of January, 1941, there was filed in the office of the Clerk of this Court, the opinion of the Court, which said opinion is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 7356. October Term, 1940, January Session, 1941.

THE G. S. SUPPIGER COMPANY, a Corporation of Delaware, *Plaintiff-Appellant*, *vs.* MORTON SALT COMPANY, a Corporation of Illinois, *Defendant-Appellee.* } Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

January 14, 1941.

Before EVANS and KERNER, *Circuit Judges*, and LINDLEY, *District Judge*.

EVANS, *Circuit Judge*. Plaintiff sued defendant for infringement of its patent No. 2,060,645, covering a "tablet depositing machine." Both validity and infringement of said patent were denied. After defendant had taken the deposition of two of plaintiff's officers, it moved for summary judgment, and its motion was granted, upon the ground that the testimony showed plaintiff was using its patent to secure a monopoly of a non-patented article, to-wit, salt tablets.

The District Court, taking its guidance from the holdings in *American Lecithin Co.* v. *The Warfield Co.*, 105 F. 2d. 207, 212; *Leitch Mfg. Co.* v. *Barber Co.*, 302 U. S. 458; *Carbice Corp.* v. *American Patents Development Corp.*, 283 U. S. 27; *Ethyl Gasoline Corp.* v. *U. S.*, 309 U. S. 436, found:

> "2. Plaintiff and its predecessor, Scientific Tablet Company, now dissolved, since 1927 have been in the business of manufacturing and selling salt tablets of

predetermined content for use in the canning industry in lieu of loose salt or brine. They also manufactured or had manufactured for them machines under the patent in suit and also other machines under patents owned by them for depositing salt tablets. They did not sell but leased said machines made under the patent in suit and their other patents to commercial canners of vegetables, as tomatoes, and the like, in the many states wherein such canners are located. The leases were in writing and included a license to use the patented machine, upon the condition and agreement by the lessee *that plaintiff's and its predecessor's salt tablets be used exclusively in said patented, leased machines.*

"3. Plaintiff's salt tablets have a particular configuration which is required for use in plaintiff's depositing machines for continuous, untroubled use. But plaintiff's salt tablets are not patented. And anyone may lawfully make and sell them.

"4. The manufacture and sale of the salt tablets is and was the main business of plaintiff's predecessor and of plaintiff after it acquired that business in June, 1928, and which it has since carried on as a subsidiary company. The end and aim of the business was and is the sale of the salt tablets in which its profits lie. The patented depositing machine of the patent in suit and of other patents is a mere secondary adjunct.

"5. The defendant is in the business of mining, processing and selling salt for commercial canning and for other purposes. It also makes and sells salt tablets such as those made and sold by plaintiff for use in the canning industry. It also makes and leases salt tablet depositing machines to canners, and in particular the salt depositing machines charged to infringe the patent in suit. Defendant's salt tablet depositing machine is not patented.

"7. There is no genuine issue as to any material fact involved in the case."

The Facts. Plaintiff is a canning company which owns and operates a wholly owned subsidiary devoted to making and leasing a patented tablet depositing machine and to making and selling salt tablets of a particular design and configuration.

This last-named business is much smaller than plaintiff's main business, which is canning.

In addition to the principal use as a salt depositor, the machines have also been sold for "separating, picking up and depositing gelatine-enclosed lemon oil capsules."

Plaintiff and its predecessor pioneered in the salt tablet industry (placing salt of predetermined quantity in a definite amount of canned vegetables, through the use of salt tablets deposited by a machine) as applied to the canning industry and developed it to its present success.

Dismissal of its suit was due, not to the invalidity or non-infringement of its patent (which were not litigated) but to plaintiff's alleged efforts to monopolize the salt tablet business by inserting in its lease (paragraph 2) a provision that the licensee or lessee should use no salt tablets in said machine, not made by plaintiff.

Defendant also makes and licenses a tablet depositing machine. It has continuously operated its business since 1927. Its machine is allegedly an infringement of plaintiff's patent. It also leases its machine to the trade and provides in its lease that the lessee shall use only salt tablets made by it.

The summary decree dismissing plaintiff's suit was based on plaintiff's use of its patent to develop a monopoly of an unpatented article, to-wit, salt tablets.

The extent to which a patentee is prevented from enjoining the infringement of his patent, if he be also guilty of using it to develop a monopoly in an unpatented product, which is made by or used in the patented article, has been considered and defined in several cases. The four leading cases are cited above.

This court announced the test which should be applied, in *American Lecithin Company* v. *Warfield, supra,* in this language:

> "Stated in another way, the underlying question in each case is directed to the inquiry as to whether the patentee's activities are within or beyond his domain. In determining when courts will interfere with the patentee's power to sue infringers (contributory or direct), it is necessary to take into consideration whether, as a practical matter, the exercise of the patent monopoly will result in a limited monopoly in an unpatented commodity, and whether the patentee seeks to derive his profits not from the invention itself but from the unpatented supplies used in the invention."

Further discussion of the rule seems unnecessary.

Our task is to apply the rule to the facts of this case. Is plaintiff, through its patent license agreement, securing a monopoly (limited or complete) in the sale of an unpatented product, to-wit, salt?

A patentee, who is successful in such an effort, accomplishes about the same thing as he does when he fixes the price at which his licensees may resell a patented article. Such a practice has been judicially condemned. *Carbice Corp.* v. *Amer. Patents Corp.*, 283 U. S. 27; *Bauer & Cie* v. *O'Donnell*, 229 U. S. 1; *Straus* v. *Victor Co.*, 243 U. S. 490; *Boston Store* v. *Amer. Graphophone Co.*, 246 U. S. 8. For the same reason, a patentee's efforts to extend its legal monopoly to a monopoly in an unauthorized field, through license agreements, must meet with like judicial condemnation.

A patent, in itself, is a monopoly—a legal monopoly. The limits of that monopoly are prescribed (and fixed) by the statute. They are to make, to sell, and to use the patented product or process for a period of seventeen years. The patent grant does not, however, extend to control of the making, the selling, or the use of an unpatented article which may be the product of the patented process or product, or which may be necessarily used by the licensee of the patented machine or product.

On the other hand, a patentee is not handicapped in his commercial transactions because he owns a patent. What he could lawfully do before he acquired the patent, he may lawfully do after acquirement. Neither the Sherman Act, nor the Clayton Act, was intended to discriminate between patentees and others when it comes to use or sale of unpatented articles.

It is because a patentee has a leverage, a coercive argument, through the ownership of an important patent, the use of which he may grant or withhold from a customer, that his position becomes one fraught with dangerous monopolistic possibilities. The temptation to use his legal patent monopoly so as to dominate a field beyond the legitimate coverage of his patent is great. For this reason the close scrutiny of patent license agreements is quite needful.

Section 3 of the Clayton Act (15 U. S. C. A. Sec. 14), upon which defendant-appellee particularly relies, makes unlawful the lease of machinery (either patented or unpatented) on condition that the lessee shall not use the supplies or other commodities of a competitor. However,

unlawfulness is made to depend upon a provision which is here important,—where the effect of such lease or such condition may be substantially to lessen competition or tend to create a monopoly in any line of commerce.

Appellant's agreement falls within the condemnation of this statute if its leases substantially lessen competition or tend to create a monopoly. It is in respect to this last requirement that our attention must be focused. In short, does the condition in plaintiff's leases tend to create a monopoly or substantially to lessen competition?

A similar question was presented in *Standard Oil Company* v. *U. S.*, 283 U. S. 163, where the restrictive agreements, tending substantially to lessen competition, were, however, very much greater than those appearing in the lease in question.

Addressing itself to the requirement of this condition, the court expressed itself at considerable length upon the necessity of proof to establish the fact that competition had been substantially lessened or that plaintiff had tended to create a monopoly. We quote therefrom:

> "But an agreement for cross-licensing and division of royalties violates the Act only when used to effect a monopoly or to fix prices, or to impose otherwise an unreasonable restraint upon interstate commerce. • • •
>
> "In the case at bar, the primary defendants own competing patented processes for manufacturing an unpatented product which is sold in interstate commerce; and agreements concerning such processes are likely to engender the evils to which the Sherman Act was directed. • • •
>
> "We must, therefore, examine the evidence to ascertain the operation and effect of the challenged contracts."

Continuing, the Court said:

> "No monopoly, or restriction of competition, in the business of licensing patented cracking processes resulted from the execution of these agreements. • • •
>
> "Moreover, the record does not show that after the execution of the agreements there was a decrease of competition among them in licensing other refiners to use their respective processes.
>
> "No monopoly, or restriction of competition, in the production of either ordinary or cracked gasoline has been proved. • • • Under these circumstances the

primary defendants could not effectively control the supply or fix the price of cracked gasoline by virtue of their alleged monopoly of the cracking processes, unless they could control, through some means, the remainder of the total gasoline production from all sources.

"Proof of such control is lacking. • • •

"• • • In the absence of proof that the primary defendants had such control of the entire industry as would make effective the alleged domination of a part, it is difficult to see how they could by agreeing upon royalties rates control either the price of the supply of gasoline, or otherwise restrain competition. • • •

"To warrant an injunction • • • there must be a definite factual showing of illegality."

The foregoing quotations are most applicable to the facts in the instant case. The decree before us was issued in a summary proceeding wherein the fact showing as to the extent of the influence of the agreement upon the salt business was almost nil.

In support of its contention that it was not substantially lessening competition or creating a monopoly in the salt business, plaintiff calls attention to the following facts:

(1) Plaintiff's machine is not the only machine used by the trade to deposit salt tablets of predetermined amount in the canning or other industries.

(2) Defendant makes a machine and uses it in the same way as plaintiff. It requires its purchaser or lessee to use salt tablets made by it.

(3) Plaintiff's lessees are permitted to purchase and use other machines. Its lessee may use, in connection with such other machines, any salt or salt tablets it desires. For the significance of this fact, see *Federal Trade Commission* v. *Sinclair Company*, 261 U. S. 463.

(4) The volume of all the salt business is large. The amount used in the canning field is so small that its complete control would not result in a monopoly of the salt industry. It is not the salt tablet as such but the salt which goes into the salt tablet which must determine the monopolistic tendency of plaintiff's lease contracts. For comparison see the amount of cracked gas to all gasoline used in the Standard Oil case, with the percentage of salt used in canning to all salt used for all purposes.

(5) Plaintiff stresses the fact that its machine may be used by its licensee for purposes other than depositing salt.

(6) Plaintiff's machines call for a $30 annual rental. The two hundred machines it has leased each cost $300 to build, from which fact it argues that the making of the machine for rental purposes—a 10% return—can not be called a sham or a coverage to monopolize the sale of an unpatented product, salt.

Due to the District Court's entry of its decree in a summary proceeding, we are not able to determine the monopolistic extent of plaintiff's contract. The court was clearly in error in granting this summary judgment without an inquiry into the facts. Unless the defendant can make "a definite factual showing of illegality" arising from plaintiff's agreement with its licensee, it was not entitled to judgment of dismissal. The presence of such a factual issue, ordinarily, is a bar to the granting of a summary judgment.

The decree is reversed.

Endorsed: Filed Jan. 14, 1941. Kenneth J. Carrick, Clerk.

And on the same day, to-wit: On the fourteenth day of January, 1941, the following further proceedings were had and entered of record, to-wit:

Tuesday, January 14, 1941.

Court met pursuant to adjournment.

Before:

Hon. Evan A. Evans, Circuit Judge.
Hon. Otto Kerner, Circuit Judge.
Hon. Walter C. Lindley, District Judge.

The G. S. Suppiger Company, a Corporation of Delaware,
Plaintiff-Appellant,
7356 *vs.*
Morton Salt Company, a Corporation of Illinois,
Defendant-Appellee.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered, adjudged and decreed by this Court that the decree of the said District Court in this cause appealed from be, and the same is hereby, reversed, with costs; and that this cause be, and the same is hereby, remanded to the said District Court.

And afterwards, to-wit: On the sixteenth day of January, 1941, there was filed in the office of the Clerk of this Court, a stipulation to extend the time for filing petition for rehearing, which said stipulation is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

The G. S. Suppiger Company, a corporation of Delaware,
Plaintiff-Appellant,
vs.
Morton Salt Company, a corporation of Illinois,
Defendant-Appellee.
} No. 7356.

STIPULATION.

It is stipulated by and between the parties hereto, the Court consenting, that the time for petitioning for rehearing in this case shall be extended fifteen (15) days from January 29, 1941 to and including February 13, 1941.

Lawrence C. Kingsland,
Estill E. Ezell,
Attorneys for Plaintiff-Appellant.

St. Louis, Missouri,
January 15, 1941.

Clarence E. Mehlhope,
Attorney for Defendant-Appellee.

Chicago, Illinois,
January 16, 1941.

Endorsed: Filed Jan. 16, 1941. Kenneth J. Carrick, Clerk.

And on the same day, to-wit: On the sixteenth day of January, 1941, the following further procedings were had and entered of record, to-wit:

Thursday, January 16, 1941.

Court met pursuant to adjournment.

Before:

Hon. Evan A. Evans, Circuit Judge.

7356	The G. S. Suppiger Company, *Plaintiff-Appellant,* *vs.* Morton Salt Company, *Defendant-Appellee.*	Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

Pursuant to stipulation of counsel, it is ordered that the time for petitioning for rehearing in this case be, and it is hereby, extended to and including February 13, 1941.

And afterwards, to-wit: On the thirteenth day of February, 1941, there was filed in the office of the Clerk of this Court, a petition for a rehearing, which said petition for a rehearing is in the words and figures following, to-wit:

IN THE

United States Circuit Court of Appeals

FOR THE SEVENTH CIRCUIT

No. 7356

THE G. S. SUPPIGER COMPANY,
a Corporation of Delaware,
Plaintiff-Appellant,

vs.

MORTON SALT COMPANY,
a Corporation of Illinois,
Defendant-Appellee.

Appeal from the District Court of the United States, Northern District of Illinois, Eastern Division.

Honorable William H. Holly, Judge Presiding.

PETITION FOR REHEARING

CLARENCE E. MEHLHOPE,
CLARENCE F. POOLE,
38 South Dearborn Street,
Chicago, Illinois,
Attorneys for Appellee.

BARNARD & MILLER, Printers, FRAnklin 0562, CHICAGO

IN THE

United States Circuit Court of Appeals

FOR THE SEVENTH CIRCUIT

No. 7356

THE G. S. SUPPIGER COMPANY,
a Corporation of Delaware,
Plaintiff-Appellant,
vs.
MORTON SALT COMPANY,
a Corporation of Illinois,
Defendant-Appellee.

Appeal from the District Court of the United States, Northern District of Illinois, Eastern Division.

Honorable William H. Holly, Judge Presiding.

PETITION FOR REHEARING

This petition for rehearing is submitted with diffidence, but with a sound conviction that the Court has reversed the decree below without legal precedent.

No further "inquiry into the facts" required.

THE FACTS AS TO WHICH THERE IS NO GENUINE ISSUE WERE NOT DISCUSSED OR EVALUATED IN THE OPINION. THEY FULLY SUPPORT THE DECREE BELOW.

The opinion states (p. 7) that "Due to the District Court's entry of its decree in a summary proceeding" • • • it is "not able to determine the monopolistic

extent of plaintiff's contract"; that "the Court was clearly in error in granting this summary judgment without an *inquiry* into the facts"; and that "unless the defendant can make 'a definite factual showing of illegality' *arising from plaintiff's agreement with its* licensee(s), it was not entitled to judgment of dismissal."

In substance, the above statement is that, without *additional evidence* to show illegality *arising from plaintiff's lease-license agreements*, the decree below was error.

The opinion in effect has obviously nullified the decision in the Lecithin case,* which it has failed to properly apply to *those facts* in this case, *as to which there is no genuine issue* and which are substantially on all fours with the material facts in the Lecithin case. *Evidence of no additional facts is required.* And there is no "*factual issue*" in the case to bar "the granting of a summary judgment."

Small field in which plaintiff has exercised its patent monopoly in attempt to create a limited monopoly in unpatented salt tablets supplied to canners.

The opinion assumes that the motion is based upon a charge that plaintiff, by its patent in suit and its lease-license agreements, has attempted or established a monopolistic illegal control of *salt* in the *salt industry.* (Opinion, pp. 6, 7.)

There is no foundation for this assumption, either in the Record or in the briefs.

The opinion assumes that the motion is based upon a charge that plaintiff, by its patent in suit and its lease-license agreements, has attempted or established a

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* *American Lecithin Co.* v. *The Warfield Co.*, 105 Fed. (2d) 207, at 212; 42 USPQ 185.

Emphasis ours throughout Brief.

monopolistic, illegal control of the *salt* used in the *canning field,* which, as stated in the opinion, is "so small that its *complete control* would not *result in a monopoly of the salt industry.*"

There is no foundation for such assumption, either in the Record or in the briefs.

That this Court should have assumed such a position leaves doubt that it has apprehended the basis upon which defendant's motion is founded. The unpatented product involved in this case is a *salt tablet* of predetermined content. It is used in a small part of the canning field, in which are also used both loose salt and salt brine. The salt industry is manifestly outside of any consideration to be had by the Court in this case. And equally without relevancy is the extent of the so much smaller canning industry, large as it may be.

The patent in suit relates to a machine for depositing *salt tablets* in cans in commercial canning of tomatoes and the like. The business of plaintiff's predecessor was the manufacture and sale of salt tablets to commercial canners. Said business was acquired some six months before the bill was filed, and was carried on by plaintiff under the lease-license agreements theretofore entered into by its predecessor.

Rule of the Lecithin case.

Quoting the Lecithin case, the opinion in the instant case says:

> "Stated in another way, the underlying question in each case is directed to whether (a) the patentee's activities are within or beyond his domain. In determining when courts will interfere with the patentee's powers to sue infringers (contributory or otherwise) it is necessary to take into consideration whether (a) as a practical matter, the exercise of

the patent monopoly will result in a limited monopoly in an unpatented commodity, and (c) whether the patentee seeks to derive his profits not from the invention itself but from the unpatented supplies used in the invention."

Adopting this statement of the rule as controlling in this Circuit and applying it to the present case the question is whether:

(a) "The patentee's activities" in the manufacture and sale of salt tablets to the canning industry "are • • • beyond his domain"; whether

(b) "As a practical matter, the exercise of the patent monopoly will result in a limited monopoly in an unpatented commodity", (salt tablets); and whether

(c) "The patentee seeks to derive his profits not from the invention itself but from the unpatented supplies (salt tablets) used in the invention", namely, the depositing machine.

There is no genuine issue as to any fact relied upon in this case and found controlling in the Lecithin case.

Extent of the legal patent monopoly.

As stated in the opinion (p. 4):

"A patent, in itself, is a monopoly—a legal monopoly. The limits of that monopoly are prescribed (and fixed) by the statute. They are to make, to sell, and to use the patented product or process for a period of seventeen years. The patent grant does not, however, extend to control of the making, the selling, or the use of an unpatented article which may be the product of the patented process or product, or which may be necessarily used by the licensee of the patented machine or product.

• • • • •

"It is because a patentee has a leverage, a coercive argument, through the ownership of an important patent, the use of which he may grant or

withhold from a customer, that his position becomes one fraught with dangerous monopolistic possibilities. *The temptation to use his legal patent monopoly so as to dominate a field beyond the legitimate coverage of his patent is great.* For this reason the close scrutiny of patent license agreements is quite needful."

Accepting this Court's definition of the "Extent of the Legal Patent Monopoly" as stated above, we now take the "Rule of the Lecithin Case" adopted in the opinion and apply it to those facts in this case as to which there is no genuine issue.

(a) "The patentee's activities" in the case at bar "are beyond his domain".

The plaintiff's (patentee's) activities are directed to the exclusive sale of unpatented *salt tablets* to the canning industry for use in the salt tablet depositing machines of the patent in suit, which are leased and licensed to be used under a written agreement by the lessee to use none other than salt tablets purchased from plaintiff exclusively.

Plaintiff in this case has *succumbed to the "temptation to use his legal patent monopoly to dominate a field beyond the legitimate coverage of his patent"*, namely, the limited field in the canning industry where *salt tablets* are used instead of loose or bulk salt or salt brine.

And it is futile for plaintiff to contend (opinion p. 6, (3)), that plaintiff's lessees are permitted to purchase and use other depositing machines. If the purchase of another machine is contemplated, plaintiff's lessee-licensee is confronted at once with a suit for infringement by his lessor-licensor. In such suit, he

would be estopped to deny the validity of the patent on his licensed machine, and would be presented with a doubtful legal determination as to the question of infringement by the machine purchased. Again, there is the matter of infringement of his lessor's *process* patent, also included in the lease-license agreement. The validity of this patent he is likewise estopped to deny. And as to the question of infringement thereof, as plaintiff will not deny, he is concluded, whatever machine he purchases, not having its origin in the plaintiff, and whatever salt tablets for use therein he purchases from others than the plaintiff.

The *Federal Trade Commission* v. *Sinclair Company* case* has absolutely no significance or bearing upon the facts in this case. *There is nothing indicating the use of a patent to dominate or control an unpatented article* beyond the legal domain of said patent, in that case.

And it may be noted here that the opinion has given no consideration whatever to plaintiff's letters to the trade directing particular attention to the close relation of patents on the depositing machines, including that of the patent in suit; the process patent; and how the use of either the machine or the process was limited to the use of salt tablets bought exclusively from plaintiff's predecessor. (See Defendant's Exhibits 3, 4 and 5, R. 37-41; and Defendant's Exhibit 8, R. 45, 46.)

It is manifest that the plaintiff's activities under his patent in this case come squarely within clause (a) of the rule announced in the Lecithin case and quoted with approval in this Court's opinion.

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* *Federal Trade Commission* v. *Sinclair Refining Co.*, 261 U. S. 463; 67 L. Ed. 746.

(b) "As a practical matter, the exercise of the patent monopoly will result in a limited monopoly in an unpatented commodity", salt tablets used in the canning industry.

As estimated by plaintiff (R. 28; Qs. 44, 45), machines made under the patent in suit were under one or the other forms of its lease-license agreement in use by two hundred lessee-licensees at the time of the depositions of Suppiger and Schofield. This significant fact "as to which there is no genuine issue" is not mentioned in the opinion. Yet each and all of the lessee-licensees of these machines were bound by the lease-license agreement to buy all the salt tablets used in said machines from the plaintiff exclusively. Thus, as a practical matter, the exercise of plaintiff's monopoly under the patent in suit resulted in a substantial lessening of competition or tendency to create a monopoly in the sale of the unpatented *salt-tablets*, so far as the lessee-licensees of the two hundred leased machines made under the patent in suit are concerned. This is certainly a limited monopoly in the field of use of salt tablets in the canning industry. And said monopoly would be extended to include each lessee-licensee added to the said two hundred by a continuance of plaintiff's aforesaid activities under its patent in suit.

It appears manifest that the exercise of the plaintiff's patent monopoly "has resulted in a limited monopoly in an unpatented commodity"—salt tablets used in the canning industry.

(c) The patentee seeks to derive his profits, not from the invention itself but from the unpatented supplies (salt tablets) used in the invention, namely, the depositing machine.

The undenied evidence in the record is that the profits of the business lie in the sale of the salt tablets. Plaintiff's attorney, when the depositions of Suppiger and Schofield were taken, asked no questions of them to explain or detract from their free admission of that fact. And their affidavits filed shortly before the hearing did not suggest that the nominal rentals of the patented depositing machines included a profit. On the contrary, in the Court below, plaintiff's brief stated:

> "Incidentally, the plaintiff *services its leased machines without charge to the lessor for the time of its service men*, although it does require the lessor *to pay for the actual cost of the parts replaced.*"

The first intimation of profits on machine rentals in the salt tablet business of plaintiff and its predecessor is presented in this Court. In these circumstances this Court should have given no credence to plaintiff's *argument* repeated in the opinion (p. 7, (6)), that *any profit* was included in said rentals.

Finding of fact 4 by the Court below quoted on page 2 of the opinion, but not discussed or otherwise mentioned therein, includes *material facts* involved in the case as to which "there is no genuine issue"; and particularly the fact that "The end and aim of the business was and is the *sale of the salt tablets in which its profits lie. The patented depositing machine* of the patent in suit is a mere secondary adjunct." (See R. 21, Q. 102, 103; R. 28, Q. 50.)

This Court must concede that in the instant case, (c) *"The patentee seeks to derive his profits, not from the invention itself but from the unpatented supplies (salt tablets) used in the invention"*, namely, the depositing machine of the patent in suit. *There is no genuine issue as to this fact, which is freely admitted by plaintiff's executive officers.* (R. 21, Q. 102, 103; R. 28, Q. 50-52). *But this appears to have been ignored in the opinion.*

From the foregoing, it is manifest that *the facts in the instant case, as to which there is no genuine issue, fully support the decree below.*

Authorities.

As we have shown above, the facts in the instant case are substantially on all fours with the Lecithin case on which defendant's motion was based. Neither the Lecithin case nor those which it followed, namely, the Carbice case (*Carbice Corp.* v. *American Patents Development Corp.*, 283 U. S. 27; 51 S. Ct. 334), and the Leitch case (*Leitch Mfg. Co.* v. *Barber Co.*, 302 U. S. 458, 463; 58 S. Ct. 288, 290), depend upon the Sherman Anti-Trust Act or upon the Clayton Act. They are each founded on the principle announced by the Supreme Court in the Carbice case that a patentee *"may not exact as the condition of a license that unpatented materials used in connection with the invention shall be purchased only from the licensor;* * * * to permit the patent owner to 'derive its profit, not from the invention on which the law gives it a monopoly, but from the unpatented supplies with which it is used' is 'wholly without the scope of the patent monopoly.' * * * *If a monopoly could be so expanded,* the owner * * * of *a patent for a machine might thereby secure a partial monopoly on the*

unpatented supplies consumed in its operation." (51 S. Ct. 334, at 335; 283 U. S. 27, at 32.)

In neither the Lecithin case nor the Carbice and Leitch cases does it appear that the Court has found that an actual illegal monopoly had been established. Certainly, in the Carbice case the Court required no inquiry as to the facts to determine whether the amount of solid carbon dioxide used in the patented "transportation package" was large enough to result in an illegal monopoly of the solid carbon dioxide industry. And in the Leitch case the Court required no inquiry as to the facts to determine whether the amount of bituminous emulsion used in the patented process was large enough to result in an illegal monopoly of the bituminous emulsion industry.

The Standard Oil case (*Standard Oil Company* v. *U. S.*, 283 U. S. 163; 51 S. Ct. 421), upon which the opinion case is based, has no application to the instant case. That case related to cross-license agreements under oil cracking process and apparatus patents. The Supreme Court, after finding nothing illegal in the cross-license agreements *per se*, stated, as quoted by Judge Evans, (opinion p. 5; 51 S. Ct. 421, pp. 425, 426; 283 U. S. 175):

> "But an agreement for cross-licensing and division of royalties violates the Act only when used to *effect* a monopoly, or to fix prices, or to impose otherwise an unreasonable restraint upon interstate commerce." Citing *Bement* v. *National Harrow Co.*, 186 U. S. 70. * * * *United States* v. *General Electric Co.*, 272 U. S. 476 * * * and others.

Thereupon, the Court found it necessary "to examine the evidence to ascertain the operation and effect of the challenged contracts." As a result, the Court found that there was no unreasonable monopoly or restriction of competition and dismissed the bill.

The Standard Oil case thus differs from the Carbice and Leitch cases in that in the Standard Oil case there was no illegality in the cross-licensing agreements directly restraining an article of commerce, whereas in both the Carbice and Leitch cases as well as in the Lecithin case and the case at bar, there was an illegal direct restraint of an unpatented article of commerce, either express or implied. And these restrictions were tied to a patent monopoly which did not include or cover such articles of commerce, but which the patentee attempted to monopolize under his patent, as in the case at bar.

The petition for rehearing should be granted.

Respectfully submitted,

CLARENCE E. MEHLHOPE,
Attorney for Defendant-Appellee.

CLARENCE F. POOLE,
OFFIELD, MEHLHOPE, SCOTT & POOLE,
Of Counsel.

Feb. 13th, 1941.

And afterwards, to-wit: On the twenty-fourth day of February, 1941. there was filed in the office of the Clerk of this Court, an answer to petition for rehearing, which said answer is in the words and figures following, to-wit:

IN THE

United States Circuit Court of Appeals

FOR THE SEVENTH CIRCUIT.

No. 7356.

THE G. S. SUPPIGER COMPANY, a Corporation of Delaware, Plaintiff-Appellant, vs. MORTON SALT COMPANY, a Corporation of Illinois, Defendant-Appellee.	Appeal from the District Court of the United States, Northern District of Illinois, Eastern Division.

Honorable William H. Holly, Judge Presiding.

BRIEF IN OPPOSITION TO THE PETITION FOR REHEARING.

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St. Louis, Missouri
February 21, 1941.

ST. LOUIS LAW PRINTING CO., 415 North Eighth Street. CEntral 4477.

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IN THE

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FOR THE SEVENTH CIRCUIT.

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Honorable William H. Holly, Judge Presiding.

BRIEF IN OPPOSITION TO THE PETITION FOR REHEARING.

We are satisfied that this Court clearly appreciates that the defendant's petition for rehearing is, in the main, a reargument of the points it has heretofore urged before this Court, and that it will rule accordingly.

This Court Fully Appreciates the Case.

The comprehensive opinion handed down by this Court on January 14, 1941, testifies to its complete understanding of all of the aspects of the case. Certainly the defendant's statement (Petition, p. 3):

> "That this Court should have assumed such a position leaves doubt that it has apprehended the basis upon which defendant's motion is founded,"

is unfounded. We suggest that the defendant itself fails to apprehend the circumstances and law involved here, for, even in the face of the lucid holding of this Court, it continues to urge its unsubstantiated conclusions as a basis for a motion for summary judgment.

The Facts, and Defendant's "Application" of the Lecithin Case Rule Thereto.

Manifestly, this Court *fully* appreciates all of the facts actually proved. They are clearly set forth in the opinion. *Again,* it is the defendant that misses a major point, namely, the nonexistence of facts here so necessary for a ruling holding the plaintiff guilty of unduly extending its patent monopoly. This Court concluded (Opinion, p. 6):

> "• • • The decree before us was issued in a summary proceeding wherein the fact showing as to the extent of the influence of the agreement upon the salt business was almost nil."

Definitely such fact showing *is* nil!

The defendant's "application" of the *Lecithin* case to the "facts" here (pages 5-9 of its Petition) is an excellent example of wishful thinking. In this case there is *no proof* that any activities of the plaintiff are unlawful or beyond its domain, *no proof* that, as a practical matter, the plaintiff's exercise of its patent monopoly results in a limited monopoly in an unpatented commodity, and *no proof* that the plaintiff's sole profits derive from the salt tablets. The mere existence of the patent sued on and the lease of machines for rental fees under restrictive leases do *not* constitute proof of the foregoing. Clearly, the defendant's *conclusions* cannot be substituted for required (and lacking) *proved facts.*

The defendant's criticism (Petition, p. 5) of this Court's statement of fact No. 3 (Opinion, p. 6) that plaintiff's lessees are permitted to purchase and use other machines and to use anyone's tablets therein is unsound. The defendant states that, if the purchase of another machine is contemplated, the plaintiff's lessee is immediately confronted with a suit for infringement by the plaintiff. But

the defendant conveniently forgets that *other* than infringing machines are made and leased. The defendant itself leases at least *one* such machine, an example being furnished the plaintiff under the stipulation of February 27, 1939. Either the defendant is grasping at a straw, or it is deliberately attempting to misrepresent what few facts do stand proved.

Conclusion.

By its opinion, this Court has again demonstrated that it does not favor the granting of summary judgments where there is a failure in the required factual structure. The rule is indeed a salutary one, for certainly each of the parties should be given its day in court.

We submit, therefore, that the petition for rehearing should be denied.

Respectfully submitted,

LAWRENCE C. KINGSLAND,
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705 Olive Street,
St. Louis, Missouri,
Attorneys for Plaintiff-Appellant.

ROBERT H. WENDT,
135 South La Salle Street,
Chicago, Illinois,
Solicitor for Plaintiff-Appellant.

EDMUND C. ROGERS,
KINGSLAND, ROGERS & EZELL,
Of Counsel.

St. Louis, Missouri,
February 21, 1941.

And on the same day, to-wit: On the twenty-fourth day of Feb., 1941, there was filed in the office of the Clerk of this Court, an appearance of counsel for appellant, which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Cause No. 7356.

The G. S. Suppiger Company

vs.

Morton Salt Company

The Clerk will enter our appearance as counsel for the appellant.

Lawrence C. Kingsland,
705 Olive St., St. Louis, Mo.
Estill E. Ezell,
705 Olive St., St. Louis, Mo.

Endorsed: Filed Feb. 24, 1941. Kenneth J. Carrick, Clerk.

And afterwards, to-wit: On the eleventh day of March, 1941, the following further proceedings were had and entered of record, to-wit:

Tuesday, March 11, 1941.

Court met pursuant to adjournment.

Before:

Hon. Evan A. Evans, Circuit Judge.
Hon. Otto Kerner, Circuit Judge.
Hon. Walter C. Lindley, District Judge.

7356 — The G. S. Suppiger Company, *Plaintiff-Appellant*, *vs.* Morton Salt Company, *Defendant-Appellee.* — Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

It is ordered by the Court that the petition for a rehearing of this cause be, and it is hereby, denied.

And afterwards, to-wit: On the thirteenth day of March, 1941, there was filed in the office of the Clerk of this Court, a motion for stay of mandate, which said motion is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

The G. S. Suppiger Company, a Corporation of Delaware,
Plaintiff-Appellant,
vs.
Morton Salt Company, a Corporation of Illinois,
Defendant-Appellee.
} No. 7356.

MOTION FOR STAY OF MANDATE.

Now comes the Morton Salt Company, defendant-appellee in the above entitled case, by its attorney, and moves the Court for a stay of mandate under Rule 25, pending defendant-appellee's application for Certiorari to the Supreme Court of the United States.

Respectfully submitted,
Clarence E. Mehlhope,
Attorney for Defendant-Appellee.

Chicago, Illinois,
March 13, 1941.

Endorsed: Filed March 13, 1941. Kenneth J. Carrick, Clerk.

And on the same day, to-wit: On the thirteenth day of March, 1941, the following further proceedings were had and entered of record, to-wit:

Thursday, March 13, 1941.

Court met pursuant to adjournment.

Before: Hon. Evan A. Evans, Circuit Judge.

7356	The G. S. Suppiger Company, *Plaintiff-Appellant,* *vs.* Morton Salt Company, *Defendant-Appellee.*	Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

On motion of counsel for appellee, it is ordered that the mandate of this Court in this cause be, and it is hereby, stayed pursuant to Rule 25 of the rules of this Court.

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of the proceedings had and papers filed (excepting briefs of counsel and stipulations relative to time for filing briefs) in the following entitled cause:

Cause No. 7356.

The G. S. Suppiger Company, a corporation of Delaware,
Plaintiff-Appellant,

vs.

Morton Salt Company, a corporation of Illinois,
Defendant-Appellee,

as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 27th day of March, A. D. 1941.

(Seal)

Kenneth J. Carrick,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed May 26, 1941

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

Office - Supreme Court, U. S.
FILED
APR 12 1941
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1940

No. ~~[illegible]~~ 49

MORTON SALT COMPANY,
a Corporation of Illinois,
Petitioner,

vs.

THE G. S. SUPPIGER COMPANY,
a Corporation of Delaware,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

and

BRIEF IN SUPPORT THEREOF

CLARENCE E. MEHLHOPE,
Counsel for Petitioner.

BARNARD & MILLER, Printers, FRAnklin 0562, CHICAGO

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1940

No. _____

MORTON SALT COMPANY,
a Corporation of Illinois,
Petitioner,

vs.

THE G. S. SUPPIGER COMPANY,
a Corporation of Delaware,
Respondent.

PETITION FOR WRIT OF CERTIORARI

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, Morton Salt Company, prays for a review on a writ of certiorari, of a decree of the United States Circuit Court of Appeals for the Seventh Circuit. The opinion of said Court was filed January 14, 1941 (R. 124), in a case entitled *"The G. S. Suppiger Company, Plaintiff-Appellant* v. *Morton Salt Company, Defendant-Appellee"*. Said opinion is reported as yet only in 48 USPQ, 277. A petition for rehearing was denied

March 11, 1941, which is the date of the decree to be reviewed (R. 157). The mandate of said Court was stayed for thirty days to permit application for certiorari to this Court (R. 159).

Ten (10) copies of the record, one of which is certified (R. 161), printed for use in the court below, together with the proceedings and opinion in that court, are furnished herewith in accordance with Rule 38, Pars. 1 and 7, of the Rules of this Court.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

The case to be reviewed is based on a complaint by the respondent in the United States District Court for the Northern District of Illinois, Eastern Division, charging infringement by your petitioner of respondent's patent on a tablet (specifically a salt tablet) depositing machine No. 2,060,645, granted to the Scientific Tablet Company (R. 70), assigned June 30, 1938, to respondent (R. 2).

Your petitioner filed an answer denying validity of the patent and infringement (R. 4). Said answer was amended (Par. 4a, R. 8-10) to present the defense that the respondent and its predecessor in title employed the patent in suit, contrary to law, to establish and maintain for itself a limited monopoly in the unpatented tablets (specifically salt tablets) to be deposited by the tablet depositing machine of the patent in suit, and that therefore it should be denied aid by a court in equity to enforce its rights under the patent laws.

The business of respondent's predecessor and of respondent, who acquired and continued that business, was

and is the manufacture and sale of salt tablets to canners. The salt tablet depositing machine of the patent in suit was leased to canners with a license in writing to use the machine of the patent in suit and a patented process involved in that use, *on condition that the salt tablets should be bought exclusively from respondent's predecessor, and afterwards from respondent* (R. 13; Defendant's Exhibits No. 1 and No. 2, R. 31, 34).

A Motion for Summary Judgment in accord with Rule 56 of the Rules of Civil Procedure for the District Courts of the United States (R. 53), based upon its amendment to its answer, and on depositions, exhibits and affidavits filed by your petitioner, and affidavits filed by respondent (R. 50, 51), was granted by Judge William H. Holly, who filed a memorandum (R. 56), and entered a final decree dismissing the complaint (R. 64). Said decree was based on his Findings of Fact and Conclusions of Law (R. 61 and 62).

The District Court's Findings of Fact were adopted from Findings common to those presented by both petitioner and respondent (R. 61). They are summarized as follows:

The business of respondent here involved is the manufacture and sale of salt tablets of predetermined weight for use in the canning industry. *The end and aim of that business is the sale of salt tablets in which the profits lie. The salt tablets are not patented.*

Respondent makes salt tablet depositing machines under the patent in suit and other patents. *Said salt tablet depositing machines,* however, *including that of the patent in suit,* are merely *secondary adjuncts to the business*—namely the sale of salt tablets (R. 28). Respondent leased said machines in writing including a license to use

the machine and also a patented process involved in that use, upon the specified condition and agreement by the lessee that respondent's unpatented salt tablets be used exclusively in said patented leased machine, specifically the depositing machine of the patent in suit (R. 31, 34).

Two hundred salt tablet depositing machines of the patent in suit were in use under the said leases. Two hundred lessee-licensee-canners using said salt tablet depositing machines of the patent in suit were bound by written agreement to buy the salt tablets to be deposited by said machines from the respondent exclusively (R. 28).

Your petitioner is in the business of mining, processing and selling salt, including salt tablets, to the canning industry. It also makes and leases unpatented salt tablet depositing machines to the canning industry, and particularly the accused machine in the instant case. Its machines bear a tag: "Morton Salt Tablet Dispenser for Use with Morton Salt Tablets Only."

The final finding of the District Court is:

> 7. "There is no genuine issue as to any material fact involved in this case" (R. 62).

Such finding was submitted by your petitioner (R. 59, Finding 11) and by respondent (R. 61, Finding 6).

The District Court's conclusion of law was:

"1. The plaintiff has attempted by the manner in which it carried on its business under the patent in suit to extend its patent monopoly beyond the boundaries described in the claims of said patent to cover unpatented products not included therein. Plaintiff, by its patent in suit, has attempted to establish a limited monopoly in the sale of unpatented salt tablets in the canning industry. This is condemned under the law." (R. 62.)

The Circuit Court of Appeals of the Seventh Circuit reversed the lower court, saying: "Due to the District Court's entry of its decree in a summary proceeding, we are not able to determine the monopolistic extent of plaintiff's contract. The court was clearly in error in granting this summary judgment without an inquiry into the facts. Unless the defendant can make 'a definite factual showing of illegality' arising from plaintiff's agreement with its licensee, it was not entitled to judgment of dismissal." (R. 130.)

JURISDICTION.

1. The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925 (28 U. S. C., Sec. 347).

2. The matter to be reviewed arises in a suit under the Patent Laws of the United States, Judicial Code, Sec. 24(7) (28 U. S. C., Secs. 41-7).

3. The question involved is one of law to be determined under said Patent Laws and was raised on a Motion by your petitioner for Summary Judgment (R. 53) under Rule 56 of the Federal Rules of Civil Procedure.

QUESTIONS PRESENTED.

The decision of the Circuit Court of Appeals for the Seventh Circuit presents the following questions:

1. Was it necessary for your petitioner to give evidence to show the "monopolistic extent of the" restraint of the trade in salt tablets resulting from "plaintiff's (respondent's) contract" to justify the decree of the District Court?

2. Was the District Court in error in granting summary judgment without further inquiry into the facts to determine whether plaintiff (respondent) had actually

established an illegal monopoly in the manufacture and sale of salt tablets?

3. Was it requisite for defendant (petitioner) to make "a definite factual showing of illegality" arising from plaintiff's (respondent's) agreement with its licensee to be entitled to judgment of dismissal?

4. Does not the defense set up by petitioner (4a, R. 8-10) arise from the patent laws and from respondent's attempt to extend its patent monopoly to unpatented articles not covered by said patent, but used in said patented article?

REASONS FOR GRANTING THE WRIT.

The exercise of judicial discretion in favor of granting a writ of certiorari in this case is based upon the following reasons:

1. The decision of the Circuit Court of Appeals of the Seventh Circuit is in obvious conflict with decisions of this Court upon the same matter;

2. The decision of the said Circuit Court of Appeals is in obvious conflict with decisions of other Circuit Courts of Appeal on the same matter; and

3. The decision of the said Circuit Court of Appeals is in obvious conflict with an earlier decision of its own on the same matter and from which it attempted to differentiate the instant case.

For the aforesaid reasons, it is urged that this petition for a writ of certiorari to the Circuit Court of Appeals for the Seventh Circuit be granted.

Respectfully submitted,

CLARENCE E. MEHLHOPE,
Counsel for Petitioner.

Chicago, Illinois,
April 10, 1941.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

Opinions of the Courts Below.

The Memorandum of the United States District Court for the Northern District of Illinois was filed January 31, 1940 (R. 56). It is reported in 31 Fed. Supp. 876. Its Findings of Fact and Conclusions of Law appear in the Record at pages 61, 62.

The opinion of the Circuit Court of Appeals of the Seventh Circuit was filed January 14, 1941. It was reported in 48 U. S. P. Q., 277. The petition for rehearing was denied March 11, 1941 (R. 157), which is the date of the decree to be reviewed.

JURISDICTION.

See petition (p. 5, *ante*).

MATTER INVOLVED.

The material facts of the case, as to which there is no genuine issue, appear in the petition (p. 2, *ante*). The matter for determination by this court is a question of law only.

SPECIFICATION OF ERRORS IN THE COURT BELOW.

The errors which petitioner will urge if the writ of certiorari is issued, are that the Court of Appeals of the Seventh Circuit erred:

1. In holding that it is not the salt tablet as such but the salt which goes into the salt tablet which must de-

termine the monopolistic tendency of respondent's lease contracts.

2. In holding that the District Court was clearly in error in granting this summary judgment without a further inquiry into the facts.

3. In holding that unless the petitioner can make "a definite factual showing of illegality" arising from respondent's agreement with its licensee, it was not entitled to judgment of dismissal.

4. In not holding that the illegality lay in the patent license agreement itself.

5. In not holding that (a) the respondent's activities were beyond the domain of its patent; (b) that as a practical matter, respondent's exercise of its patent monopoly tended to result in a limited monopoly in an unpatented commodity, namely, salt tablets used in the canning industry; and (c) the respondent sought to derive its profits not from the invention itself but from the unpatented supplies, salt tablets used in the patented depositing machine.

6. In reversing the decree of the United States District Court, for the Northern District of Illinois, Eastern Division.

SUMMARY OF ARGUMENT.

The essential conclusion of law made of record by the District Court was:

> "1. The plaintiff *has attempted by the manner in which it carried on its business under the patent in suit* to *extend* its patent monopoly beyond the boundaries described in the claims of said patent *to cover unpatented products not included therein.* Plaintiff, by its patent in suit, has *attempted to establish a limited monopoly* in the sale of unpatented salt tablets in the canning industry. This is condemned under the law." (R. 62.)

This conclusion of law was made by the District Court notwithstanding plaintiff's contention that defendant (your petitioner) "is not entitled to judgment because plaintiff" (respondent) "*has not obtained and cannot obtain a complete monopoly on the sale of salt tablets through the restrictions imposed on the use of the patented machines.*" (R. 63.)

The Court of Appeals, however, sustained respondent's (plaintiff's) contention and held that the conclusion of law 1 of the District Court was error.

The argument in this brief will be devoted to showing that the District Court's conclusion of law on which its decree was based, was correct and in accord with the decisions of this Court and with the decisions of the Circuit Courts of Appeal of other Circuits. And that the endorsement by the Circuit Court of Appeals below of respondent's (plaintiff's) contention as stated above, with its reversal of the decree of the District Court based on that contention, is without sound legal precedent.

Even in cases arising under the Sherman Act, the fact that the party accused "has not obtained * * * a complete monopoly," has been held without determinative effect in a recent decision by this Court. *Fashion Originators' Guild of America, Inc., et al.*, v. *Federal Trade Commission,* (48 U. S. P. Q. 483, at 485). This Court said in that case:

> "Nor is it determinative in considering the policy of the Sherman Act that petitioners may not yet have achieved a complete monopoly. For 'it is sufficient if it really tends to that end and to deprive the public of the advantages which flow from free competition.' *United States* v. *E. C. Knight Co.*, 156 U. S. 1, 16; *Addyston Pipe & Steel Co.* v. *United States,* 175 U. S. 211, 237. It was, in fact, one of the hopes of those who sponsored the Federal Trade Commission Act that its effect might be prophylactic and that through it attempts to bring about complete monopolization of an industry might be stopped in their incipiency."

ARGUMENT.

No further "inquiry into the facts" required.

THE FACTS AS TO WHICH THERE IS NO GENUINE ISSUE WERE NOT DISCUSSED OR EVALUATED IN THE OPINION OF THE COURT OF APPEALS BELOW. SAID FACTS FULLY SUPPORT THE DECREE OF THE DISTRICT COURT.

The opinion states (R. 130) that "Due to the District Court's entry of its decree in a summary proceeding" * * * it is "not able to determine the monopolistic extent of plaintiff's contract"; that "the Court was clearly in error in granting this summary judgment without an *inquiry* into the facts"; and that "unless the defendant can make 'a definite factual showing of illegality' *arising from plaintiff's agreement with its* licensee(s), it was not entitled to judgment of dismissal."

In substance, the above statement is that, without *additional evidence* to show illegality *arising from respondent's (plaintiff's) lease-license agreements*, the decree below was error.

The Court of Appeals below has obviously nullified its own earlier decision in the *American Lecithin Co.* v. *The Warfield Co.*, 105 Fed. (2d) 207, at 212; 42 U. S. P. Q., 180, at 185, which it has failed to properly apply to *those facts* in this case, *as to which there is no genuine issue* and which are substantially on all fours with the material facts in the Lecithin case. *Evidence of no additional facts is required.* And there is no *"factual issue"* in the case to bar "the granting of a summary judgment."

Note: Emphasis ours throughout Brief.

Small field in which respondent has exercised its patent monopoly in attempt to create a limited monopoly in unpatented salt tablets supplied to canners.

The Circuit Court of Appeals below found that (R. 129, (4)):

> "The volume of all the salt business is large. The amount used in the canning field is so small that its complete control would not result in a monopoly of the salt industry. It is not the salt tablet as such, but the salt which goes into the salt tablet which must determine the monopolistic tendency of plaintiff's lease contracts."

This is immaterial.

The unpatented product involved in this case is a *salt tablet* of predetermined content. It is used in a small part of the canning field, in which are also used both loose salt and salt brine. The salt industry is manifestly outside of any consideration to be had by the Court in this case. And equally without relevancy is the extent of the so much smaller canning industry, large as it may be.

The patent in suit relates to a machine for depositing *salt tablets* in cans in commercial canning of tomatoes and the like. The business of respondent's predecessor was the manufacture and sale of salt tablets to commercial canners. Said business was acquired some six months before the bill was filed, and was carried on by respondent under the lease-license agreements theretofore entered into by its predecessor.

Rule of the Lecithin case.

Quoting the Lecithin case, the opinion of the Court of Appeals in the instant case says:

> "Stated in another way, the underlying question in each case is directed to whether (a) the patentee's

activities are within or beyond his domain. In determining when courts will interfere with the patentee's powers to sue infringers (contributory or otherwise) it is necessary to take into consideration whether (b) as a practical matter, the exercise of the patent monopoly will result in a limited monopoly in an unpatented commodity, and (c) whether the patentee seeks to derive his profits not from the invention itself but from the unpatented supplies used in the invention."

Adopting this statement of the rule as controlling in the Seventh Circuit and applying it to the present case the question is whether:

(a) The respondent's activities in the manufacture and sale of salt tablets to the canning industry are beyond his domain; whether

(b) As a practical matter, the exercise of the patent monopoly will result in a limited monopoly in an unpatented commodity, (salt tablets); and whether

(c) The respondent seeks to derive its profits not from the invention itself but from the unpatented supplies (salt tablets) used in the invention, namely, the depositing machine.

Extent of the legal patent monopoly.

As stated in the opinion of the Court of Appeals below (R. 127):

"A patent, in itself, is a monopoly—a legal monopoly. The limits of that monopoly are prescribed (and fixed) by the statute. They are to make, to sell, and to use the patented product or process for a period of seventeen years. The patent grant does not, however, extend to control of the making, the selling, or the use of an unpatented article which may be the product of the patented process . . . product, or which may be necessarily used by the licensee of the patented machine or product.

• • • • •

> "It is because a patentee has a leverage, a coercive argument, through the ownership of an important patent, the use of which he may grant or withhold from a customer, that his position becomes one fraught with dangerous monopolistic possibilities. *The temptation to use his legal patent monopoly so as to dominate a field beyond the legitimate coverage of his patent is great.* For this reason the close scrutiny of patent license agreements is quite needful."

Accepting the above definition of the "Extent of the Legal Patent Monopoly" as sound, we now take the "Rule of the Lecithin Case" and apply it to those facts in this case as to which there is no genuine issue.

(a) The respondent's activities in the case at bar are beyond its patent's domain.

The respondent's activities are directed to the exclusive sale of unpatented *salt tablets* to the canning industry for use in the salt tablet depositing machines of the patent in suit, which are leased and licensed to be used under a written agreement by the lessee to use none other than salt tablets purchased from plaintiff exclusively.

Respondent in this case has *succumbed to the "temptation to use its legal patent monopoly to dominate a field beyond the legitimate coverage of its patent"*, namely, the limited field in the canning industry where *salt tablets* are used instead of loose or bulk salt or salt brine.

And it is futile for respondent to contend as it did below (opinion, R. 129 (3)), that its lessees are permitted to purchase and use other depositing machines. If the purchase of another machine is contemplated, respondent's lessee-licensee is confronted at once with a suit for infringement by his lessor-licensor. In such suit, he would be estopped to deny the validity of the patent on his

licensed machine, and would be presented with a doubtful legal determination as to the question of infringement by the machine purchased. Again, there is the matter of in-infringement of his lessor's *process* patent (1,887,073, R. 103), also included in the lease-license agreement. (Defendant's Exhibit No. 1; R. 31, 32.) The validity of this patent he is likewise estopped to deny. And as to the question of infringement thereof, as plaintiff will not dispute, he is concluded, whatever machine he purchases, not having its origin in the plaintiff, and whatever salt tablets for use therein he purchases from others than the plaintiff.

The *Federal Trade Commission* v. *Sinclair Refining Company* case, 261 U. S. 463; 67 L. Ed. 746, has absolutely no significance or bearing upon the facts in this case. *There is nothing indicating the use of a patent to dominate or control an unpatented article* beyond the legal domain of said patent, in that case.

And it may be noted here that the opinion of the Court of Appeals below has given no consideration whatever to respondent's letters to the trade directing particular attention to the close relation of patents on the depositing machines, including that of the patent in suit; the process patent; and how the use of either the machine or the process was *limited to the use of salt tablets bought exclusively from plaintiff's predecessor.* (See Defendant's Exhibits 3, 4 and 5, R. 37-41; and Defendant's Exhibit 8, R. 45, 46.)

It is manifest that the respondent's activities under its patent in this case come squarely within clause (a) of the rule announced in the Lecithin case.

(b) As a practical matter, the exercise of the patent monopoly will result in a limited monopoly in an unpatented commodity, salt tablets used in the canning industry.

As estimated by respondent (R. 28; Qs. 44, 45), machines made under the patent in suit were under one or the other forms of its lease-license agreement in use by two hundred lessee-licensees at the time of the depositions of Suppiger and Schofield. This significant fact "as to which there is no genuine issue" is not mentioned in the opinion of the Court below. *Yet each and all of the lessee-licensees of these machines were bound by the lease-license agreement to buy all the salt tablets used in said machines from the plaintiff exclusively.* Thus, as a practical matter, the exercise of plaintiff's monopoly under the patent in suit resulted in a substantial lessening of competition or tendency to create a monopoly in the sale of the unpatented *salt-tablets,* so far as the lessee-licensees of the two hundred leased machines made under the patent in suit are concerned. This is certainly a limited monopoly in the field of use of salt tablets in the canning industry. And said monopoly would be extended to include each lessee-licensee added to the said two hundred by a continuance of plaintiff's aforesaid activities under its patent in suit.

It appears manifest that the exercise of the respondent's patent monopoly has resulted in a limited monopoly in an unpatented commodity—salt tablets used in the canning industry.

(c) The respondent seeks to derive its profits, not from the invention itself but from the unpatented supplies (salt tablets) used in the invention, namely, the depositing machine.

The undenied evidence in the record is that the profits of the business lie in the sale of the salt tablets. Plaintiff's attorney, when the depositions of Suppiger and Schofield were taken, asked no questions of them to explain or detract from their free admission of that fact. And their affidavits filed shortly before the hearing did not suggest that the nominal rentals of the patented depositing machines included a profit. (R. 50, 51.)

The first intimation of profits on machine rentals in the salt tablet business of respondent and its predecessor was presented in the Court of Appeals below. In these circumstances that Court should have given no credence to respondent's *argument* repeated in the opinion (R. 130 (6)), that *any profit* was included in said rentals.

Finding of fact 4 by the District Court (R. 62) includes *material facts* involved in the case as to which "there is no genuine issue"; and particularly the fact that "The end and aim of the business was and is the *sale of the salt tablets in which its profits lie. The patented depositing machine* of the patent in suit is a mere secondary adjunct." (See R. 21, Q. 102, 103; R. 28, Q. 50.)

This Court must concede that in the instant case, (c) *The patentee seeks to derive his profits, not from the invention itself but from the unpatented supplies (salt tablets) used in the invention,* namely, the depositing machine of the patent in suit. *There is no genuine issue as to this fact, which is freely admitted by respondent's executive officers.* (R. 21, Q. 102, 103; R. 28, Q. 50-52.)

But this appears to have been ignored in the opinion of the Court of Appeals below.

From the foregoing, it is manifest that *the facts in the instant case, as to which there is no genuine issue, fully support the decree of the District Court.*

Authorities.

As we have shown above, the facts in the instant case are substantially on all fours with the Lecithin case on which defendant's motion was based. Neither the Lecithin case nor those which it followed, namely, the Carbice case (*Carbice Corporation of America* v. *American Patents Development Corp.*, 283 U. S. 27; 51 S. Ct. 334), and the Leitch case (*Leitch Mfg. Co.* v. *Barber Co.*, 302 U. S. 458, 463; 58 S. Ct. 288, 290), depend upon the Sherman Anti-Trust Act or upon the Clayton Act. They are each founded on the principle announced by the Supreme Court in the Carbice case that a patentee "*may not exact as the condition of a license that unpatented materials used in connection with the invention shall be purchased only from the licensor:* * * * to permit the patent owner to 'derive its profit, not from the invention on which the law gives it a monopoly, but from the unpatented supplies with which it is used' is 'wholly without the scope of the patent monopoly.' * * * *If a monopoly could be so expanded,* the owner * * * of *a patent for a machine might thereby secure a partial monopoly on the unpatented supplies consumed in its operation.*" (51 S. Ct. 334, at 335; 283 U. S. 27, at 32.)

In neither the Lecithin case nor the Carbice and Leitch cases does it appear that the Court has found that *an actual illegal monopoly had been established.* Certainly, in the Carbice case the Court required no inquiry as to

the facts to determine whether the amount of solid carbon dioxide used in the patented "transportation package" was large enough to result in an illegal monopoly of the solid carbon dioxide industry. And in the Leitch case the Court required no inquiry as to the facts to determine whether the amount of bituminous emulsion used in the patented process was large enough to result in an illegal monopoly of the bituminous emulsion industry.

The Standard Oil case (*Standard Oil Company* v. *U. S.*, 283 U. S. 163; 51 S. Ct. 421), upon which the opinion of Court of Appeals below is based, has no application to the instant case. That case related to cross-license agreements under oil cracking process and apparatus patents. The Supreme Court, after finding nothing illegal in the cross-license agreements *per se*, stated, as quoted by Judge Evans, (opinion p. 5; 51 S. Ct. 421, pp. 425, 426; 283 U. S. 175):

> "But an agreement for cross-li[illegible]ing and division of royalties violates the Act only [illegible]n used to *effect* a monopoly, or to fix prices, or [illegible]pose otherwise an unreasonable restraint upon i[illegible]tate commerce." Citing *Bement* v. *National Harro[illegible] Co.*, 186 U. S. 70. * * * *United States* v. *General Electric Co.*, 272 U. S. 476 * * * and others.

Thereupon, the Court found it necessary "to examine the evidence to ascertain the operation and effect of the challenged contracts." As a result, the Court found that there was no unreasonable monopoly or restriction of competition and dismissed the bill.

The Standard Oil case thus differs from the Carbice and Leitch cases in that in the Standard Oil case there was no illegality in the cross-licensing agreements directly restraining an article of commerce, whereas in both the Carbice and Leitch cases as well as in the

Lecithin case and the case at bar, there was *an illegal direct restraint of an unpatented article of commerce, either express or implied.* And *these restrictions were tied to a patent monopoly which did not include or cover such articles of commerce,* but *which the patentee attempted to monopolize under his patent, as in the case at bar.*

REASONS FOR GRANTING THE WRIT.

The Motion for Summary Judgment in the instant case was based on *American Lecithin Co.* v. *The Warfield Co.,* 105 Fed. (2d) 207 (see p. 11, *ante*).

Petitions for writs of certiorari by each party to that case were denied. (308 U. S. 609; 60 S. Ct. 171. 308 U. S. 609; 60 S. Ct. 175.)

The Lecithin case later was referred to with approval in the case of *Ethyl Gasoline Corporation* v. *United States,* 60 S. Ct. 618, at 626; 309 U. S. 436, at 459.

The facts in the instant case were substantially on all fours with the facts in the Lecithin case which followed the Carbice case and the Leitch case in this court (p. 11, *ante*). In neither of these cases did the court find that an actual illegal monopoly had been established by the patentee's acts.

Philad Co. v. *Lechler Laboratories, Inc.,* 107 Fed. (2d) 747, was a case decided by the Circuit Court of Appeals of the Second Circuit. That Court also followed the Supreme Court cases followed by the Lecithin case.

The recent case of *B. B. Chemical Co.* v. *Ellis* (48 USPQ, 487) was a case decided by the Circuit Court of Appeals of the First Circuit. That Court also followed the Supreme Court cases followed by the Lecithin case.

In neither of the above cases, either in the Supreme Court or in the Courts of Appeal of the First or Second Circuits, or in the Lecithin case in the Seventh Circuit, does it appear that the Court had required evidence that an actual illegal monopoly had been established in the articles over which the patentee attempted to extend his patent.

Thus, the sole exception to the general trend of authority is to be found in the decision of the Circuit Court of Appeals of the Seventh Circuit in the instant case.

The writ should be granted so that the question of law in the instant case may be properly determined in accord with the rule as decided by this Court and as followed by other Circuit Courts of Appeal.

CONCLUSION.

For the reasons above stated it is urged that the petition for writ of certiorari be granted.

Respectfully submitted,

CLARENCE E. MEHLHOPE,
Counsel for Petitioner.

CLARENCE F. POOLE,
OFFIELD, MEHLHOPE, SCOTT & POOLE,
Of Counsel.

April 10th, 1941.

MAY 16

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1940

No. ~~948~~ 49

MORTON SALT COMPANY,
a Corporation of Illinois,
Petitioner,

vs.

THE G. S. SUPPIGER COMPANY,
a Corporation of Delaware,
Respondent.

BRIEF IN REPLY TO RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1940

No. 946

MORTON SALT COMPANY,
a Corporation of Illinois,

Petitioner,

vs.

THE G. S. SUPPIGER COMPANY,
a Corporation of Delaware,

Respondent.

BRIEF IN REPLY TO RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

This brief is submitted to direct the Court's attention to several misleading statements in respondent's brief.

Respondent on page 3 of its brief says that *it had no opportunity to rebut the "meager" facts advanced as the basis of the petitioner's motion for summary judgment;* and on the previous page that the Court below held in

effect that *it had not had its day in court. Such assertions are without foundation.*

The record shows that on the 18th day of October, 1939, there was filed in the office of the Clerk of the United States District Court below, in behalf of petitioner (defendant) depositions of Suppiger and Schofield (R. 10), together with paper exhibits Nos. 1 to 12 (R. 31-50). On December 8, 1939, the reply affidavits of Suppiger and Schofield were filed in said District Court in behalf of the respondent (plaintiff) (R. 50). On December 28, 1939, the motion for summary judgment together with the affidavit of Daniel Peterkin, Jr., in behalf of petitioner (defendant) were filed in the District Court (R. 53, 54). Thereafter, the memorandum of Judge Holly on the motion was filed in that Court on January 31, 1940 (R. 56).

In the affidavits of Schofield and Suppiger it was asserted that plaintiff had *sold depositing machines* made under the patent in suit for use other than for depositing salt tablets,—one at Argo, Illinois, and the other at Edgewater, New Jersey. Respondent apparently believed the *sale of two machines not involved in the salt tablet business* was a matter of defense, as stressed in its brief (p. 7). *If it had other and additional matter of defense, why did it not then assert it by the said affiants?*

After the free admission in their depositions *that the profits lay in the salt tablets* and *that the depositing machines were a mere secondary adjunct to that business, it was not incumbent upon petitioner to submit additional evidence to establish that fact.* Certainly the petitioner was not required to submit "testimony to the effect that" the rentals on the patented depositing machines do "not contain a profit" as it is claimed it should have done in respondent's brief, page 8.

It is absurd for respondent to claim or suggest that

it did not have its day in court, or to argue as it does on page 5 that "no opportunity was given the respondent to rebut facts which the petitioner has construed in its favor."

Any income by the outright sale *of the two machines* mentioned in the said affidavits, is immaterial to the attempted monopoly of the salt tablet business under attack in this case. It does not appear in the affidavits when those two machines were sold. They may have been sold the day before the date of the affidavits, for all that appears therein. Reference to this sale was obviously a mere blind to confuse the issue.

On page 7 of respondent's brief it is stated that the petitioner employs a restrictive clause. This refers to the legend on the tag on petitioner's machine which was mentioned on page 4 of the petition. As there stated, *petitioner's depositing machine is not patented.* Petitioner has no patent on its depositing machine by which to attempt to establish a monopoly in the sale of the salt tablets.

As stated in petitioner's (main brief, p. 7): "The matter for determination by this Court is a question of law only."

CONCLUSION.

For the reasons stated in the brief in support of the petition for writ of certiorari, supplemented by those herein, the petition for writ of certiorari should be granted.

Respectfully submitted,

CLARENCE E. MEHLHOPE,
Counsel for Petitioner.

Chicago, Illinois,
May 14, 1941.

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1941.

No. 49

MORTON SALT COMPANY,
a Corporation of Illinois,
Petitioner,

vs.

THE G. S. SUPPIGER COMPANY,
a Corporation of Delaware,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR PETITIONER.

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Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR PETITIONER.

Opinions of the Courts Below.

This case comes before this Court for review of a decree of the United States Circuit Court of Appeals for the Seventh Circuit.

The question to be determined by the Court is one of law. It arises from a decree entered upon a Motion for

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NOTE: Emphasis ours throughout this brief.

Summary Judgment under Rule 56* of the Federal Rules of Civil Procedure, in a patent suit filed by *The G. S. Suppiger Company, Respondent,* v. *Morton Salt Company, Petitioner,* in the United States District Court for the Northern District of Illinois, Eastern Division, dismissing the complaint. Said decree was reversed by the said Circuit Court of Appeals.

The patent in suit relates to a machine for depositing *unpatented compressed salt tablets* of predetermined content into cans in the commercial canning of vegetables such as tomatoes and the like. The bill was dismissed by the District Court on the ground that the respondent had used its patent on the depositing machine in an *attempt to secure* a *limited monopoly in the salt tablets* deposited by the patented machine.

The Memorandum of the United States District Court for the Northern District of Illinois was filed January 31, 1940 (R. 56). It is reported in 31 Fed. Supp. 876. Its Findings of Fact and Conclusions of Law appear in the Record at pages 61, 62.

The opinion of the Circuit Court of Appeals of the Seventh Circuit was filed January 14, 1941. It is reported in 117 Fed. (2d) 968. It appears in the Record at pages 124-130. A petition for rehearing was denied March 11, 1941 (R. 157), which is the date of the decree to be reviewed.

A petition for writ of certiorari to review the decree of the said Circuit Court of Appeals reversing the decree of the District Court was filed on the 12th day of April 1941, (R. Cover). The petition was granted by this Court on the 26th day of May, 1941 (R. 162).

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* See Appendix.

Jurisdiction.

1. The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925 (28 U. S. C., Sec. 347).

2. The matter to be reviewed arises in a suit under the Patent Laws of the United States, Judicial Code, Sec. 24(7) (28 U. S. C., Secs. 41-7).

3. *The question involved is one of law to be determined under said Patent Laws* and was raised on a Motion for Summary Judgment by your petitioner (R. 53) under Rule 56 of the Federal Rules of Civil Procedure.

Summary Statement of the Matter Involved.

The case to be reviewed is based on a complaint by the respondent in the United States District Court for the Northern District of Illinois, Eastern Division, charging infringement by your petitioner of respondent's patent on a machine for depositing tablets (specifically salt tablets) No. 2,060,645, granted to the Scientific Tablet Company (R. 70, 77), assigned June 30, 1938, to respondent (R. 2, 11).

Your petitioner filed an answer denying validity of the patent and infringement (R. 4). Said answer was amended (Par. 4a, R. 8-10) to present the defense that the respondent and its predecessor in title employed the patent in suit, contrary to law, to establish and maintain for itself a limited monopoly in the unpatented tablets (specifically salt tablets) to be deposited by the tablet depositing machine of the patent in suit, and that therefore respondent-plaintiff should be denied aid by a court in equity to enforce its rights under the p: ent laws.

The **business of respondent's predecessor and of respondent**, which acquired and continued that business, was **and is the manufacture and sale of salt tablets to canners.**

The salt tablet depositing machine of the patent in suit was leased to canners with a license in writing to use the machine of the patent in suit and a *patented process** involved in that use, *on condition that the salt tablets should be bought exclusively from respondent's predecessor, and afterwards from respondent* (R. 12, 13; Defendant's Exhibits No. 1 and No. 2, R. 31, 34; Offered R. 15, 16).

A motion for Summary Judgment (R. 53), in accord with Rule 56 of the Rules of Civil Procedure for the District Courts of the United States, based upon its amendment to its answer, and on depositions (R. 11-29), exhibits (R. 31-50) and affidavits filed by your petitioner, and affidavits filed by respondent (R. 50, 51), was granted by Judge William H. Holly, who filed a memorandum (R. 56), and entered a final decree dismissing the complaint (R. 64). Said decree was based on his Findings of Fact and Conclusions of Law (R. 61-63).

The District Court's Findings of Fact were adopted from Findings common to those presented by both petitioner (R. 57-59) and respondent (R. 59-61). They are summarized as follows:

The **business** of respondent here involved is the manufacture and sale of salt tablets of predetermined weight for use in the canning industry. **The end and aim of that business is the sale of salt tablets in which the profits lie. The salt tablets are not patented** (Finding of Fact 4, R. 62).

Respondent makes salt tablet depositing machines under the patent in suit and other patents. **Said salt tablet depositing machines,** however, **including that of the patent in suit,** are **merely secondary adjuncts to the business**—namely **the sale of salt tablets** (R. 28). Respondent did not sell but leased said machines in writing including a

* "Method of Flavoring in Canning, Preserving and Bottling Operations No. 1,887,073", R. 103-105.

license to use **the machine and also a patented process involved in that use* upon the specified condition and agreement by the lessee that respondent's unpatented salt tablets be used exclusively in said patented leased machine—specifically the depositing machine of the patent in suit** (Findings of Fact 2 and 4, R. 61, 62; Defendant's Ex. 1, R. 31—offered R. 15; Defendant's Ex. 2, R. 34—offered R. 16).

Two hundred salt tablet depositing machines of the patent in suit were in use under the said leases. **Two hundred lessee-licensee-canners using said salt tablet depositing machines of the patent in suit were bound by written agreement to buy the salt tablets to be deposited by said machines from the respondent exclusively** (R. 28; Finding of Fact 6, R. 62).

Your petitioner is in the business of mining, processing and selling salt, including salt tablets, to the canning industry. It also makes and leases **unpatented machines** *to the canning industry for depositing salt tablets, and particularly the accused machine in the instant case.* Its machines bear a tag: "Morton Salt Tablet Dispenser for Use with Morton Salt Tablets Only."

The final finding of the District Court is:

> "7. *There is no genuine issue as to any material fact involved in this case*" (R. 62).

Such finding was submitted by your petitioner (R. 59, Finding 11) and by respondent (R. 61, Finding 6).

The District Court's conclusion of law was:

> "1. **The plaintiff has attempted by the manner in which it carried on its business under the patent in suit to extend its patent monopoly beyond the boundaries described in the claims of said patent to cover**

*R. 12, 13—Q's 26-30; R. 14, Q's 45, 46; Patent 1,887,073, R. 102.

unpatented products not included therein. Plaintiff, by its patent in suit, has attempted to establish a limited monopoly in the sale of unpatented salt tablets in the canning industry. This is condemned under the law" (R. 62).

The Circuit Court of Appeals of the Seventh Circuit **reversed** the lower court, saying: "Due to the District Court's **entry of its decree in a summary proceeding**, we are not able to determine the **monopolistic extent of plaintiff's contract.** The court was clearly **in error in granting this summary judgment without an inquiry into the facts.** Unless the defendant can make **'a definite factual showing of illegality' arising from plaintiff's agreement** with its licensee, it was not entitled to judgment of dismissal" (R. 130).

Questions Presented.

The decision of the Circuit Court of Appeals for the Seventh Circuit presents the following questions:

1. Was it necessary for your petitioner to give evidence to show the "*monopolistic extent* of the" restraint of the trade in salt tablets resulting from "plaintiff's (respondent's) contract" to justify the decree of the District Court?

2. Was the District Court *in error in granting summary judgment without further inquiry into the facts* to determine whether respondent had *actually established an illegal monopoly* in the manufacture and sale of salt tablets?

3. Was it requisite for defendant (petitioner) to make "a *definite factual showing of illegality*" arising from plaintiff's (respondent's) agreement with its licensee, to be entitled to judgment of dismissal?

4. Does not the defense set up by petitioner (4a, R.

8-10) *arise from the patent laws and from respondent's attempt to extend its patent monopoly to unpatented articles not covered by said patent, but used in said patented article?*

Specification of Errors.

The Court of Appeals of the Seventh Circuit erred:

1. In holding that it is not the salt tablet as such but the salt which goes into the salt tablet which must determine the monopolistic tendency of respondent's lease contracts.

2. In holding that the District Court was clearly in error in granting this summary judgment without a further inquiry into the facts.

3. In not holding (a) that the respondent's activities were beyond the domain of its patent; (b) that as a practical matter, respondent's exercise of its patent monopoly tended to result in a limited monopoly in an unpatented commodity, namely, salt tablets used in the canning industry; and (c) that the respondent sought to derive its profits not from the invention itself but from the unpatented supplies. salt tablets, used in the patented depositing machine.

4. In holding that unless the petitioner can make "a definite factual showing of illegality" arising from respondent's agreement with its licensee, it was not entitled to judgment of dismissal.

5. In not holding that the illegality lay in the patent license agreement itself.

6. In reversing the decree of the United States District Court, for the Northern District of Illinois, Eastern Division.

SUMMARY OF ARGUMENT.

The essential conclusion of law made of record by the District Court was:

> "1. The plaintiff *has attempted by the manner in which it carried on its business under the patent in suit to extend* its patent monopoly beyond the boundaries described in the claims of said patent *to cover unpatented products not included therein.* Plaintiff, by its patent in suit, has *attempted to establish a limited monopoly* in the sale of unpatented salt tablets in the canning industry. This is condemned under the law" (p. 5, *supra*).

This conclusion of law was made by the District Court notwithstanding respondent's (plaintiff's) contention that your petitioner (defendant) "is not entitled to judgment because plaintiff" (respondent) *"has not obtained and cannot obtain a complete monopoly on the sale of salt tablets through the restrictions imposed on the use of the patented machines"* (R. 63).

The Court of Appeals, however, sustained respondent's (plaintiff's) contention and held that the conclusion of law 1 of the District Court was error.

The argument in this brief will be devoted to showing that the *District Court's conclusion of law on which its decree was based, was correct and in accord with the decisions of this Court; with a prior decision of the Circuit Court of Appeals of the Seventh Circuit below, following said decisions;* and *with the decisions of the Circuit Courts of Appeal of other Circuits.* And that the **endorsement** by the Circuit Court of Appeals below of respondent's (plaintiff's) contention as stated above, and its **reversal** of the decree of the District Court based on that contention, is *without sound legal precedent.*

ARGUMENT.

Error 1.

The extent of the field in which respondent has exercised its patent monopoly in attempt to create a limited monopoly in unpatented salt tablets is immaterial.

The Circuit Court of Appeals below found that (R. 129, (4)):

> "*The volume of all the salt business is large. The amount used in the canning field is so small that its complete control would not result in a* **monopoly of the salt industry.** *It* **is not the salt tablet** *as such, but the* **salt which goes into the salt tablet** *which must determine the monopolistic tendency of plaintiff's lease contracts.*"

The patent in suit relates to a *machine for depositing salt tablets* in cans in commercial canning of tomatoes and the like. The *business* of respondent and of its predecessor was the *manufacture and sale of salt tablets to commercial canners.* Said *business was carried on by respondent under the lease-license agreements* (Defendant's Exhibits 1 and 2) (p. 4—*supra*).

The unpatented, commercial product involved in this case is a salt tablet of predetermined content. It is used in a **small part of the canning field,** in which are also used both *loose salt* and *salt brine.* The **salt industry** is outside of any consideration to be had by the Court in this case. And obviously without relevancy is *the* **extent** *of the so much smaller canning industry,* **large** as it may be.

Error 2.

No Further "Inquiry Into the Facts" Required.

THE FACTS AS TO WHICH THERE IS NO GENUINE ISSUE WERE NOT DISCUSSED OR EVALUATED IN THE OPINION OF THE COURT OF APPEALS BELOW. SAID FACTS FULLY SUPPORT THE DECREE OF THE DISTRICT COURT.

The opinion of the Court of Appeals below states (R. 130) that "Due to the District Court's entry of its decree in a summary proceeding" * * * it is "not able to determine the monopolistic extent of plaintiff's contract"; that "the" District "Court was clearly in error in granting this summary judgment without an *inquiry* into the facts"; and that "unless the defendant" (petitioner) "can make **'a definite factual showing of illegality' arising** *from plaintiff's agreement with its* licensee(s), it was not entitled to judgment of dismissal."

In substance, the above statement is that, without **additional evidence** to show **illegality arising** *from respondent's (plaintiff's) lease-license agreements,* the decree below was error.

The Court of Appeals below has obviously nullified its own earlier decision in the *American Lecithin Co.* v. *The Warfield Co.* (105 Fed. (2d) 207, at 212), following the decisions of this Court named therein, which it has failed to properly apply to *those facts* in this case, *as to which there is no genuine issue* and which are **substantially on all fours with the material facts** in the Lecithin case. *Evidence of no additional facts is required in this case.* And there is no *"factual issue"* (Finding of Fact 7, p. 5, *supra*) in the case **to bar "the granting of a summary judgment"** (R. 130).

Error 3.

Rule of the Lecithin Case.

The Court of Appeals below failed to follow its own earlier decision in the case of *American Lecithin Co.* v. *The Warfield Co.* (105 Fed. (2d) 207 at 212).

Quoting its opinion in the Lecithin case, which was based upon the prior decisions of this Court upon the *legal question here involved,* the opinion of the Court of Appeals below in the instant case says:

> "Stated in another way, the underlying *question* in each case is directed to the inquiry as to *whether* (a) *the patentee's activities are within or beyond his domain.* In determining when courts will interfere with the patentee's power to sue infringers (contributory or direct) it is necessary to take into consideration *whether* (b) *as a practical matter, the exercise of the patent monopoly will result in a limited monopoly in an unpatented commodity,* and (c) *whether the patentee seeks to derive his profits not from the invention itself but from the unpatented supplies used in the invention.*"

Adopting this statement of the rule as *controlling in the Seventh Circuit* in following the decisions of this Court, and applying it to the present case the question is: whether

> **(a) The respondent's activities in the manufacture and sale of salt tablets to the canning industry are beyond its patent's domain**; whether
>
> **(b) As a practical matter, the exercise of the respondent's patent monopoly will result in a limited monopoly in an unpatented commodity, (salt tablets)**; and whether
>
> **(c) The respondent seeks to derive its profits, not from the invention itself, but from the unpatented supplies (salt tablets) used in the invention.**

Extent of the legal patent monopoly.

As stated in the opinion of the Court of Appeals below (R. 127):

> "A patent, in itself, is a monopoly—a legal monopoly. The limits of that monopoly are prescribed (and fixed) by the statute. They are to make, to sell, and to use the patented product or process for a period of seventeen years. The patent grant does not, however, extend to control of the making, the selling, or the use of an unpatented article which may be the product of the patented process or product, or which may be necessarily used by the licensee of the patented machine or product.
>
> "It is because a **patentee has a leverage**, a coercive argument, through the ownership of an important patent, the use of which he may grant or withhold from a customer, **that his position becomes one fraught with dangerous monopolistic possibilities.** *The temptation to use his legal patent monopoly so as to dominate a field beyond the legitimate coverage of his patent is great.* For this reason the **close scrutiny of patent license agreements is quite needful.**"

Accepting the above definition of the "Extent of the Legal Patent Monopoly" as sound, we now take the "Rule of the Lecithin Case" and apply it to those facts in this case as to which there is no genuine issue.

(a) The respondent's activities in the manufacture and sale of salt tablets to the canning industry are beyond its patent's domain.

The respondent's activities are directed to the exclusive sale of *unpatented salt tablets* to the canning industry for use in the salt tablet depositing machines of the patent in suit, which are *leased and licensed* to be used *under a written agreement by the lessee to use none other than salt tablets purchased from respondent exclusively.*

Respondent in this case has *succumbed to the "temptation to use"* its *"legal patent monopoly to dominate a field beyond the legitimate coverage of its patent"*, namely, the *limited field in the canning industry* where *salt tablets* are used instead of loose or bulk salt or salt brine.

And it is **futile for respondent to contend** as it did below (opinion, R. 129 (3)), that *its lessees are permitted to purchase and use other depositing machines.* If the purchase of another machine is contemplated, respondent's lessee-licensee is confronted at once with a suit for infringement by his lessor-licensor. In such suit, he would be *estopped to deny the validity* of the patent on his licensed machine, and *would be presented with a doubtful legal determination as to the question of infringement by* the *machine purchased.*

Again, there is the matter of infringement of his lessor's *process* patent (1,887,073, R. 103), also included in the lease-license agreement. (Defendant's Exhibit No. 1; R. 31, 32; offered R. 15.) The *validity* of *said process* patent he is likewise *estopped* to deny. And as to the *question of its infringement*, as respondent will not dispute, *he is concluded*, whatever machine he purchases, not having its origin in the respondent, and whatever salt tablets for use therein he purchases from others than the respondent.

The *Federal Trade Commission* v. *Sinclair Refining Company* case, 261 U. S. 463; 67 L. Ed. 746, upon which respondent based the aforesaid *contention*, has absolutely no significance or bearing upon the facts in this case. *There is nothing* in that case *charging the use of a patent to dominate or control an unpatented article beyond the legal domain of said patent.*

And it may be noted here that the opinion of the Court of Appeals below has given no consideration whatever to respondent's letters to the trade directing particular at-

tention to the close relation of patents on the depositing machines, including that of the patent in suit and of *the process patent;* and stating that the use of either the *patented machine* or of the *patented process* was *limited to the use of salt tablets bought exclusively from plaintiff's predecessor.* (See Defendant's Exhibits 3, 4 and 5, R. 37-41; offered R. 17 and Defendant's Exhibit 8, R. 45, 46; offered R. 24.)

It is manifest that the respondent's activities under its patent in suit in this case come squarely within clause (a) of the rule announced by the Court of Appeals below, when following this Court, in the Lecithin case.

(b) As a practical matter, the exercise of the patent monopoly will result in a limited monopoly in an unpatented commodity, salt tablets used in the canning industry.

As estimated by respondent, *two hundred of the depositing machines made under the patent in suit were in use by lessee-licensees, under one or the other forms of its lease-license agreement originated by its predecessor and continued in force by it, at the time of the depositions of Suppiger and Schofield* (p. 5—*supra*). *This significant fact* "**as to which there is no genuine issue**" is not mentioned in the opinion of the Court below. *Yet each and all of the lessee-licensees of these machines were bound by the lease-license agreement to buy all the salt tablets used in said machines from the respondent exclusively.*

Thus, *as a practical matter, the exercise of respondent's monopoly under the patent in suit resulted in a substantial lessening of competition or tendency to create a monopoly in the sale of the unpatented salt tablets, to the extent of*

said lessee-licensees of the two hundred leased machines made under the patent in suit. This is *certainly a limited monopoly in the field of use of salt tablets in the canning industry.* And said *monopoly* would be *extended* to include *each lessee-licensee added to the said two hundred by a continuance of respondent's aforesaid activities under its patent in suit.*

It appears, (b) as a practical matter, that the exercise of the respondent's patent monopoly will and in fact has resulted in a *limited monopoly in an unpatented, commercial commodity—salt tablets* used in the canning industry.

(c) The respondent seeks to derive its profits, not from the invention itself but from the unpatented supplies (salt tablets) used in the invention.

The *undenied evidence in the record is that* **the profits of the business lie in the sale of the salt tablets** (R. 21; Finding of Fact 4, R. 62). Plaintiff's attorney, when the depositions of Suppiger and Schofield were taken, *asked no questions of them to explain or detract from their free admission of that fact* (R. 22, 29).

Findings of Fact submitted by respondent (plaintiff) included the finding:

> **"4. The manufacture and sale of the salt tablets was the main business of plaintiff's predecessor. The plaintiff acquired that business in June, 1938, which it has since carried on as a subsidiary company. The end and aim of the business was and is the sale of the salt tablets in which its profits lie."** (R. 60.)

The affidavits of Suppiger and Schofield, filed shortly before the hearing in the District Court, *did not suggest that the nominal rentals of the patented depositing machines* **included a profit.** (R. 50, 51.) The *first intimation of profits on the patented depositing machine rentals*

in the *salt tablet business of respondent and its predecessor* **was presented at the argument in the Court of Appeals below.** In these circumstances that Court should have *given no credence* to respondent's *argument* repeated in the opinion (R. 130 (6)), that *any profit was included in said rentals.*

Finding of fact 4 by the District Court (R. 62) includes *material facts* involved in the case as to which "there is no genuine issue"; and particularly the fact that *"The end and aim of the business was and is* the *sale of the salt tablets in which its profits lie. The patented depositing machine is a mere secondary adjunct."* (See R. 21, Qs. 102, 103; R. 28, Q. 50.)

This Court *must concede that in the instant case:*—(*c*) *The respondent seeks to derive its profits, not from the invention itself but from the unpatented supplies,* namely, **salt tablets used in the invention.** *There is no genuine issue as to this fact, which is freely admitted by respondent's executive officers.* (R. 21, Qs. 102, 103; R. 28, Qs. 50-52.). *But this was ignored in the opinion of the Court of Appeals below.*

From the foregoing, **it is manifest that the facts in the instant case, as to which there is no genuine issue, fully support the decree of the District Court which followed the rule of the Lecithin case.**

Authorities.

As we have shown above, the facts in the instant case are substantially on all fours with the Lecithin case which consistently followed the decisions of this Court as announced in the cases named therein and on which defendant's motion was based. Neither the Lecithin case nor

those which it followed, namely the Carbice case (*Carbice Corporation of America* v. *American Patents Development Corp.*, 283 U. S. 27; 51 S. Ct. 334), nor the Leitch case (*Leitch Mfg. Co.* v. *Barber Co.*, 302 U. S. 458, 463; 58 S. Ct. 288, 290), depend upon the Sherman Anti-Trust Act or upon the Clayton Act. They are each founded on the principle announced by the Supreme Court in the Carbice case that a patentee "*may not exact as the condition of a license that unpatented materials used in connection with the invention shall be purchased only from the licensor; * * * to permit the patent owner to 'derive its profit, not from the invention on which the law gives it a monopoly, but from the unpatented supplies with which it is used' is 'wholly without the scope of the patent monopoly.' * * * If a monopoly could be so expanded, the* **owner * * * of a patent for a machine might thereby secure a partial monopoly on the unpatented supplies consumed in its operation.**" (51 S. Ct. 334, at 335; 283 U. S. 27, at 32.)

In neither the Lecithin case nor the Carbice or Leitch cases does it appear that the Court has found that *an actual illegal monopoly had been established.* Certainly, in the Carbice case the Court *required no inquiry as to the facts to determine whether the amount of solid carbon dioxide used in the patented "transportation package" was large enough to result in an illegal monopoly of the solid carbon dioxide industry.* And in the Leitch case the Court required *no inquiry as to the facts to determine whether the amount of bituminous emulsion used in the patented process was large enough to result in an illegal monopoly* of the *bituminous emulsion industry.*

Errors 4 and 5.

The Standard Oil case (*Standard Oil Company* v. *U. S.*, 283 U. S. 163; 51 S. Ct. 421), upon which the opinion of the Court of Appeals below is based, has no application to the instant case. That case related to cross-license agreements under oil cracking process and apparatus patents. The Supreme Court, after *finding nothing illegal* in the cross-license *agreements per se,* stated, as quoted by Judge Evans, (Opinion R. 128; 51 S. Ct. 421, pp. 425, 426; 283 U. S. 175):

> "But an agreement for cross-licensing and division of royalties violates the Act only when used to *effect a monopoly* or to fix prices, or to impose otherwise an unreasonable restraint upon interstate commerce." Citing *Bement* v. *National Harrow Co.,* 186 U. S. 70. * * * *United States* v. *General Electric Co.,* 272 U. S. 476 * * * and others.

Thereupon, this Court found it *necessary* "to *examine the evidence to ascertain the operation and effect of the challenged contracts.*" As a result, the Court decided that there was no unreasonable monopoly or restriction of competition and dismissed the bill.

The Standard Oil case thus differs from the Carbice and Leitch cases in that in the Standard Oil case *there was no illegality in the cross-licensing agreements directly restraining an article of commerce.* But in both the Carbice and Leitch cases as well as in the Lecithin case and the case at bar, there was *an illegal direct restraint of an unpatented article of commerce, either express or implied.* And *these restrictions were tied to a patent monopoly which did not include or cover such articles of commerce,* but *which the patentee attempted to monopolize under his patent, as in the case at bar.*

Petitions for writs of certiorari by each party to the Lecithin case were denied by this Court. (308 U. S. 609; 60 S. Ct. 171. 308 U. S. 609; 60 S. Ct. 175.) But the Lecithin case later was referred to by this Court with approval in the case of *Ethyl Gasoline Corporation* v. *United States,* 309 U. S. 436, at 459; 60 S. Ct. 618, at 626.

Philad Co. v. *Lechler Laboratories, Inc.,* 197 Fed. (2d) 747, decided by the Circuit Court of Appeals of the Second Circuit, and the recent case of *B. B. Chemical Co.* v. *Ellis,* (48 U. S. P. Q. 487; 117 Fed. (2d) 829), decided by the Court of Appeals of the First Circuit, each followed the cases of this Court upon which the decision in the Lecithin case was based.

In neither of the above cases, either in the Supreme Court or in the Courts of Appeal of the First or Second Circuits, or in the Lecithin case in the Seventh Circuit, does it appear that the Court had required evidence that an actual illegal monopoly had been established in the articles over which the patentee attempted to extend his patent.

Thus, the sole exception to the general trend of authority is to be found in the decision of the Circuit Court of Appeals of the Seventh Circuit in the instant case.

Even in cases arising under the Sherman Act, the fact that the party accused "has not obtained * * * a complete monopoly," has been held without determinative effect in a recent decision by this Court. *Fashion Originators' Guild of America, Inc., et al.,* v. *Federal Trade Commission,* (61 S. Ct. 703-707). This Court said in that case:

> "Nor is it determinative in considering the policy of the Sherman Act that petitioners may not yet have achieved a complete monopoly. For 'it is sufficient if it really tends to that end and to deprive the public of the advantages which flow from free competition.'

United States v. *E. C. Knight Co.*, 156 U. S. 1, 16, 15 S. Ct. 249, 255, 39 L. Ed. 325; *Addyston Pipe & Steel Co.* v. *United States*, 175 U. S. 211, 237, 20 S. Ct. 96, 105, 44 L. Ed. 136. It was, in fact, one of the hopes of those who sponsored the Federal Trade Commission Act that its effect might be prophylactic and that through it attempts to bring about complete monopolization of an industry might be stopped in their incipiency."

Rule 56—Summary Judgment.

The Court of Appeals below stressed the fact that this case was disposed of on a motion for summary judgment. It says, "The Court was clearly in error in granting this summary judgment without an inquiry into the facts."

But clearly, as we have shown, the District Court made a full "inquiry into the facts" which were presented to it by both parties. And in particular that Court found (as agreed by both parties) **"there is no genuine issue as to any material fact involved in this case"** (p. 5 *ante*).

Rule 56 (c)* provides that "The judgment sought shall be rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that, except as to the amount of damages, there is no genuine issue as to any material fact, and that the moving party is entitled to a judgment as a matter of law."

The District Court acting under the Rule found that *the facts before it as to which there was no genuine issue entitled petitioner to a judgment as a matter of law.* That the case was decided on a motion for summary judgment is immaterial, if the facts justified that conclusion.

---

* Appendix.

CONCLUSION.

We submit that the decree of the Court of Appeals below should be reversed, and that the decree of the District Court, dismissing the bill, should be sustained.

Respectfully submitted,

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Counsel for Petitioner.

WALTER A. SCOTT,
CLARENCE F. POOLE,
Of Counsel.

October 10, 1941.
1776 First National Bank Building,
Chicago, Ill.

APPENDIX.

Rule 56—Summary Judgment.

(b) For Defending Party. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.

(c) Motion and Proceedings Thereon. The motion shall be served at least 10 days before the time specified for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that, except as to the amount of damages, there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1941.

No. 49

MORTON SALT COMPANY,
a Corporation of Illinois,
Petitioner,

vs.

THE G. S. SUPPIGER COMPANY,
a Corporation of Delaware,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

REPLY BRIEF FOR PETITIONER.

CLARENCE E. MEHLHOPE,
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ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

REPLY BRIEF FOR PETITIONER.

The following comments upon some matters advanced in Respondent's Brief may aid the Court.

The *main* business of the respondent, as stated on p. 2 of its brief, may be *canning;* but that is not the business involved in this case. That business is the manufacture

and sale of salt tablets to the canning industry. (See Brief for Petitioner, p. 4.) That business was acquired with all patents, in June, 1938, from respondent's predecessor, Scientific Tablet Co. G. S. Suppiger is President and C. M. Schofield is general assistant to the President of the respondent and had the same offices in the said Scientific Tablet Co., respondent's predecessor in the *salt tablet business.* (R. 11, 25.)

On page 2 of Respondent's brief it is alleged that the respondent by its president G. S. Suppiger conceived the idea of the use of a salt tablet in canning vegetables never used before in commercial canning; and that, "These facts stand proved in the Sixth Circuit suit * * *."

The said "Sixth Circuit suit" is the case of *Scientific Tablet Co.* (*respondent's predecessor in the salt tablet business*) v. *Ossege*, charging infringement of its process patent No. 1,887,073, referred to on page 4 of Petitioner's Brief. (R. 55; 102.)

The salt tablets used by defendant Ossege in his canning operations (tomatoes) were sold to him by Morton Salt Company, petitioner here, which openly and of record assumed the defense of its customer, and is bound thereby.

Said case was tried Feb. 23-24, 1939. On Feb. 26, 1940, the Court issued its opinion holding said process patent invalid. A final decree, dismissing the bill, was entered April 29, 1940. (*Scientific Tablet Co.* v. *Ossege*, 31 Fed. Sup. 361.) The case is pending on appeal to the Circuit Court of Appeals of the Sixth Circuit.

Respondent's brief (p. 3) denies that the District Court's findings of fact were *adopted from findings common* to those presented by both parties. We believe that

this Court will accept petitioner's statement on page 4 of its brief as in substance correct.

On page 4, respondent's brief quotes Judge Evans as saying that:

> "(2) Defendant makes a machine and uses it in the same way as plaintiff. It requires its purchaser or licensee to use salt tablets made by it."

This is not in accord with the record as pointed out in our main brief on page 5. Judge Evans' statement overlooks the fact that your petitioner's machines are not patented and that your petitioner has not the leverage of a patent on the machines to enforce the notice on the tag attached to the leased machines.

On page 5 of respondent's brief it is stated:—"the petitioner is a direct infringer that has *wilfully copied* the respondent's machine * * *." There is no evidence whatever to that effect; neither of the Courts below found such fact, nor is it material.

The respondent's brief then follows: "This case is not a case of a plaintiff seeking assistance from the law to *stop a competitor from competing with it in unpatented merchandise.*"

The admitted facts show that this statement is unsupportable.

The petitioner's business specifically involved in this case, the manufacture and sale of salt tablets is directly in competition with the salt tablet business, begun by petitioner's predecessor, the Scientific Tablet Company, and carried on later by the respondent after it acquired that business. Your petitioner would never have needed

to design and lease any machine for dispensing its own salt tablets for use in the canning industry had not free competition in the sale of the unpatented salt tablets been blocked by the respondent, with its lease license agreements, based on its several patents, including the patent in suit and its aforesaid process patent. And your petitioner has had to defend its customer against the last named patent as hereinabove set forth.

As will have been noted above, and on page 6 of his brief, respondent has used the words "direct infringer" and "direct infringement". The question as to any difference between a direct infringer and a contributory infringer has not heretofore been raised in this case. Upon this point we are content to quote the words of the Court of Appeals below in the Lecithin case:

> "The plaintiff argues that the defense of extra-legal monopolization, admittedly valid in contributory infringement cases, is not available in direct infringement cases. This argument would permit the plaintiff to monopolize the sale of lecithin by controlling the buyers in the trade, although the law forbids the same result by controlling the sellers in the trade. Yet, to sanction control over buyers is to permit the plaintiff to control his competing sellers. It might be said, therefore, that the plaintiff is urging this court to approve doing in one form what can not be done in another form." (*American Lecithin Co.* v. *Warfield Co.*, 105 Fed. (2d) 207, at 211.)

Any distinction between a "direct infringer" and a "contributory infringer" in the matter of a patentee attempting to extend his legal patent monopoly to a monopoly of unpatented, commercial articles not covered by his legal monopoly under his patent, is without meaning.

It is not seen what comfort respondent can find in its attempt to bring its practice under the Clayton Act,

as it does on pages 10 and 11 of its brief. In the case of *Motion Picture Patents Co.* v. *Universal Film Manufacturing Co.*, the Court of Appeals applied that statute to the case and dismissed the bill. This Court, however, in affirming the decision of the Court of Appeals below and after quoting the Clayton Act, said:

> "Our conclusion renders it unnecessary to make the application of this statute to the case at bar which the Circuit Court of Appeals made of it, but it must be accepted by us as a most persuasive expression of the public policy of our country with respect to the question before us." (37 S. Ct. 421.)

The quotations in respondent's brief on pages 11 and 12 from the Motion Picture case concerning the extent to which the use of a patented machine may be restricted to specific supplies, in no manner supports respondent's contention that such restrictions may be valid under the general law, even though invalid under the patent law.

The case of *Federal Trade Commission* v. *Sinclair Refining Co.* is discussed in plaintiff's main brief on page 13 and needs no further discussion here. No patent or patents were involved in that case.

Respondent's Plan.

The respondent's *unlawful use of the patent in suit* in an attempt to *suppress competition in the unpatented salt tablets*, was a part of a general scheme or plan including its three other salt tablet depositing machine patents and its process patent No. 1,887,073, to establish a limited monopoly in the sale of said *salt tablets*.

The object and intent appear not only from the leases but also from the form letters, Defendant's Exhibits Nos.

3, 4, 5 and 8, referred to on page 14 of petitioner's main brief. Said form letters were sent generally to the canning trade, including lessees of plaintiff's patented machines and users of its patented process, warning them repeatedly of plaintiff's *exclusive right to sell salt tablets* for use in plaintiff's patented depositing machines and in its patented process. And the effect of the form letters on the business of the defendant is shown not only in complaints received from defendant's customers, as shown in Defendant's Exhibit 9 (R. 46), but also in the letter of cancellation of an order for a *depositing machine* and for *salt tablets* by the Lake Erie Canning Company, Defendant's Exhibit 12 (R. 49, 50).

It is obvious that respondent in this case has used and is using its patent as a leverage to dominate a field beyond the legitimate coverage of its patent, salt tablets used in the canning industry.

CONCLUSION.

For the reasons stated in our main brief, supplemented by those herein, the decree of the Circuit Court of Appeals below should be reversed, and the decree of the United States District Court sustained.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1940.

MORTON SALT COMPANY,
Petitioner,

v.

THE G. S. SUPPIGER COMPANY,
Respondent.

No. ~~946~~. 49

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1940.

MORTON SALT COMPANY,
Petitioner,
v.
THE G. S. SUPPIGER COMPANY,
Respondent.
No. 946.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

MANIFESTLY THERE IS NO GROUND HERE FOR GRANTING THE PETITION.

This is a simple case involving the infringment of a United States Letters Patent in which the defendant moved for summary judgment under rule 56 of the Rules of Federal Procedure, basing its motion on a charge of monopoly. There are no conflicting decisions by Circuit Courts of Appeals. No public or unusual question is involved.

Manifestly, no question has been raised by the decision of the Seventh Circuit Court of Appeals which this Court will consider. Regardless of what the petitioner alleges in its petition and supporting brief, what the Seventh Circuit Court of Appeals *actually* said and held is clear and unambiguous, that Court stating (48 USPQ. 277, 280):

"* * * The decree before us was issued in a summary proceeding wherein the fact showing as to the extent of the influence of the agreement upon the salt business was almost nil.

* * * * * * *

"Due to the District Court's entry of its decree in a summary proceeding, we are not able to determine the monopolistic extent of plaintiff's contract. The Court was clearly in error in granting this summary judgment without an inquiry into the facts. Unless the defendant can make 'a definite factual showing of illegality' arising from plaintiff's agreement with its licensee, it was not entitled to judgment of dismissal. The presence of such a factual issue, ordinarily, is a bar to the granting of a summary judgment.

"The decree is reversed."

The Seventh Circuit Court of Appeals, by its opinion, made *no ruling one way or another* as to the alleged attempt of the respondent to extend its patent beyond the limitations of the claims. Therefore, exploded at the outset is the petitioner's basic theory that the decision of the Seventh Circuit Court of Appeals is in *conflict* with decisions of this Court, with decisions of other circuit courts of appeal, and with an earlier decision of its own! There can be *no conflict* where the decisions are *not on the same point!* The Seventh Circuit Court of Appeals ruled that the evidence adduced by the petitioner was not sufficient to sustain a dismissal of the complaint on a motion for summary judgment. That Court decided that the respondent is entitled to its day in Court.

Palpably, we have here in the petitioner merely another dissatisfied litigant who is asking this Court to rule upon a question of fact; who is asking this Court to hold that the evidence *is* sufficient for an equitable determination of the question of monopoly.

Therefore, the petition is clearly without even a vestige of merit and should be denied.

General Statement.

We submit that the foregoing succinct consideration effectively shows that the petition contains no ground for granting a writ of certiorari. However, to point out the inaccuracies contained in the petition and supporting brief, we present below a brief statement of the case, and by simple analyses show the fallacies of the petitioner's arguments.

The respondent filed its complaint (R. 2) in the United States District Court of the Northern District of Illinois, Eastern Division, charging infringement by the petitioner of its Letters Patent No. 2,060,645, granted for a depositing machine (R. 70). After filing an answer (R. 4) containing the usual defenses the petitioner amended its answer to incorporate an allegation of monopoly (R. 8). The petitioner took the depositions of Suppiger, president of the G. S. Suppiger Company (R. 11), and of Schofield, general assistant to the manager of the G. S. Suppiger Company (R. 24), and thereupon filing a motion for summary judgment under Rule 56 of the Rules of Civil Procedure (R. 53), accompanying the same with the affidavit of one Peterkin, Jr. (R. 54).

The few facts developed are not contested, although interpretations thereof differ. Actually, the respondent was not afforded an opportunity even to rebut the meager facts advanced as the basis of the petitioner's motion for summary judgment.

The main business of the respondent is canning (R. 12, Q. 18), the salt tablet and depositing machine business being secondary (R. 12). The petitioner is in the salt business as its primary effort.

The respondent leases depositing machines manufactured by or for it to canners for depositing salt tablets in canned foodstuffs, particularly canned tomatoes (R. 13, *et seq.*). Some leases contain the following clause (R. 32):

> "Scientific hereby grants Lessee a license to practice said inventions, and a lease to use only Tablet Depositing Machine No....., Type....., Serial No....., valued at $....., 64 on condition that such practice of said inventions and use of said Tablet Depositing Machine be limited entirely and exclusively to use with tablets obtained from Scientific."

Other leases contain the clause (R. 36):

> "The Lessee covenants and agrees that the said machine shall be used exclusively for depositing compressed flavoring tablets purchased from the owner and for no other purpose."

Each lessee pays the sum of $30.00 per year for use of the leased machine (R. 19), a year in the canning business being no more than two or three months. By the leases any canner may use depositing machines of the petitioner, or of any other concern, and may deposit petitioner's or other's salt tablets thereby. The petitioner, in fact, employs a restrictive clause similar to that used by the respondent (Pet. p. 4).

Decisions of the Courts.

The District Court entered on February 23, 1940, a final decree in favor of the petitioner, dismissing the complaint (R. 64).

The Circuit Court of Appeals for the Seventh Circuit, on January 14, 1941, handed down an opinion unanimously reversing the decree of the District Court (48 USPQ 277, and at the back of the record).

ARGUMENT.

Before proceeding, we reiterate that the decree of the District Court was entered as a result of a motion for summary judgment under Rule 56 of the Rules of Civil Procedure. No opportunity was given the respondent to rebut facts which the petitioner has construed in its favor. The Seventh Circuit Court of Appeals reversed the lower court's decree, for it does not favor summary judgments based on incomplete facts and half-truths, and it readily perceived that the record in this case was of such a structure. It gave the respondent its day in court of which the petitioner now complains.

The Petitioner Misapprehends the Decision of the Court Below.

At the outset it is manifest from the paragraph included under "matter involved" on page 7 of the Petition and Brief that the petitioner misapprehends the decision of the Seventh Circuit Court of Appeals, for the petitioner states, "The matter for determination of this Court is a question of law only." The Seventh Circuit Court of Appeals made no application of law whatsoever, but ruled that there were not sufficient facts of record upon which to base a decision on the point of alleged monopoly (see p. 2, supra).

Hence, the petitioner is actually asking this Court to decide a question of fact which is, "Are there sufficient facts here to make a determination of the question of alleged monopoly?"

Restrictive Clauses Are Not Illegal Per Se.

Apparently the petitioner is proceeding on the fallacious theory that a tying clause involving a patented article is illegal per se. In the *International Business Machine Corporation v. U. S.*, 298 U. S. 131, 80 L. ed. 1085, this Court specifically stated (p. 1089):

> "But we do not place our decision on this narrow ground. We rest it rather on the language of § 3 of the Clayton Act which expressly makes tying clauses unlawful, whether the machine leased is 'patented or unpatented.' The section does not purport to curtail the patent monopoly of the lessor or to restrict its protection by suit for infringement. But it does in terms deny to the lessor of a patented, as well as of an unpatented machine, the benefit of any condition or agreement that the lessee *shall not use the supplies of a competitor* * * *." (Emphasis added.)

In other words, this Court held there that each case stands on its own factual structure and depends for decision on the attendant circumstances. The petitioner here relies *solely* on the *mere existence* of the tying clause and the patent.

The Seventh Circuit Court of Appeals fully appreciated the ruling of this Court in the *International Business Machine* case, *supra*, for it said (279):

> "On the other hand, a patentee is not handicapped in his commercial transactions because he owns a patent. What he could lawfully do before he acquired the patent, he may lawfully do after acquirement. Neither the Sherman Act, nor the Clayton Act, was intended to discriminate between patentees and others when it comes to use or sale of unpatented articles."

There Is No Agreement as to the Interpretation of the Facts.

The petitioner harps upon finding of fact No. 7 of the District Court, which is: "There is no genuine issue as to any material fact involved in this case" (R. 62). We point out that such merely means that what few facts are *of record* are not contested. On the *interpretation* of such facts *there is no agreement!* The point as urged by the petitioner is immaterial to the decision of the Seventh Circuit Court of Appeals.

This Case Clearly Distinguishes From the Lecithin Case.

The petitioner contends in its argument (Brief 11) that the Seventh Circuit Court of Appeals has obviously nullified its decision in *American Lecithin Co. v. The Warfield Co.*, 105 F. (2d) 207, and, further, that the facts here are ***substantially*** on all fours with the material facts in the *Lecithin* case. Surely the petitioner cannot be serious in such averments! How *can* a ruling of insufficient facts nullify the *Lecithin* decision?

As for the present case being on all fours with the *Lecithin* case, the petitioner certainly stretches the word "substantially," for in that case The American Lecithin Co. did not practice the invention of the patent; here, the respondent manufactures depositing machines, most of which it leases and some of which it sells (R. 13, 51, 52). There, The American Lecithin Co. derived its sole and total income from the sale of the unpatented lecithin as a limited monopoly; here, the respondent does derive an income from the sale of unpatented salt tablets on which it has no monopoly (as do the petitioner and others), but it *also* derives an income from the rentals paid for the leased machines ($30 each per year, R. 19, Q. 92) and from the outright sale of certain machines (R. 51, 52). There, The American Lecithin Co. entered into no contracts, merely selling lecithin under an implied agreement to use its patented process and to make the patented product; here, the respondent leases its own property by written agreement (R. 31, 34). There, full control of the sale of the unpatented product was through the patent sued on; here, what *small* control the plaintiff may exercise over salt tablets is by its *leases* and *not* by its patent in the *same manner that the petitioner exercises control over the salt tablets that it sells*, the petitioner employing a restrictive clause. Hence, as to the facts *proved*, there is *no* similarity *what-*

soever between the present case and *The American Lecithin Co.* case, *supra.*

Petitioner's Application of the Rule of the Lecithin Case.

The 1935 Practical Standard Dictionary of Funk & Wagnalls defines monopoly as "the exclusive right or privilege of engaging in a particular traffic" and "exclusive possession or control of anything." The petitioner fails to appreciate that monopoly incorporates control, and, therefore, erroneously applies the rule of the *Lecithin* case.

All of the respondent's licensees are free to buy or lease as many other kinds of depositing machines as they may desire. In such machines they may use anyone's salt tablets. The petitioner and other companies lease salt tablet depositing machines which do not come under the patent sued on. How, then, could the respondent *ever* establish a monopoly in salt tablets by its patent sued on?

And the respondent receives $30.00 per year for each of its leased depositing machines. The petitioner refuses to recognize that there could be any profit in such rental, although it amounts to 10 per cent per year of the cost of a machine (for two to three months service!), and the petitioner submitted *no* testimony to the effect that such $30.00 does not contain a profit.

CONCLUSION.

We repeat that the petitioner is only another dissatisfied litigant. And its dissatisfaction consists *wholly* in its objection to granting the respondent its day in court.

We submit that the petition is peculiarly without merit, and that it should be denied.

Respectfully submitted,

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1941.

MORTON SALT COMPANY,
Petitioner,
v.
THE G. S. SUPPIGER COMPANY,
Respondent.
No. 49.

BRIEF FOR RESPONDENT.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1941.

MORTON SALT COMPANY,
Petitioner,
v.
THE G. S. SUPPIGER COMPANY,
Respondent.
No. 49.

BRIEF FOR RESPONDENT.

STATEMENT.

Opinions of the Courts Below.

This case is before this Court on a writ of certiorari to the Circuit Court of Appeals for the Seventh Circuit for review of a decree of that court.

The Memorandum of the United States District Court for the Northern District of Illinois was filed January 31, 1940 (R. 56) and is recorded at 31 F. Supp. 876. The court's findings of fact and conclusions of law are in the Record at pages 61-63.

The opinion of the Circuit Court of Appeals of the Seventh Circuit was filed January 14, 1941 (R. 124-130) and is recorded at 117 F. (2d) 968. A Petition For Rehearing was denied March 11, 1941 (R. 157).

The Petition For Writ of Certiorari of the petitioner was filed April 12, 1941, and was granted May 26, 1941 (R. 162).

The Petitioner correctly states the source of this Court's jurisdiction.

Supplemental Statement of the Case.

Inaccuracies or misstatements, omissions, and argument in the petitioner's summary statement require us to correct and supplement the facts for this Court's consideration.

The *main* business of the respondent is not the manufacture and sale of salt tablets, or the manufacture and lease of depositing machines; it is canning. The Seventh Circuit Court of Appeals sums up the facts in connection with this point (R. 125):

> "The Facts. Plaintiff is a canning company which owns and operates a wholly owned subsidiary devoted to making and leasing a patented tablet depositing machine and to making and selling salt tablets of a particular design and configuration.
>
> "This last-named business is much smaller than plaintiff's main business, which is canning."

The respondent pioneered the salt tablet field for commercial canning. Its president, G. S. Suppiger, a canner of many years experience, in 1927 conceived that a salt tablet of predetermined weight would overcome the difficulties existing in the use of loose salt and brine in commercial canning. Salt tablets had never been so used before. These facts stand proved in the Sixth Circuit suit to which the petitioner repeatedly refers.

Immediately Suppiger set about to provide mechanical depositing means to eliminate the human element in salting, although hand salting was used at first and *is still*

used in many places. In 1931 U. S. Letters Patent 1,824,695 issued to Suppiger (R. 83-92) with two restricted claims. Other machine patents were issued subsequently (R. 93, 107, 69).

Salt tablets have been sold to canners since 1927, fourteen years, and beginning in the same year of 1927 unpatented depositing machines were leased under restricted supplies clauses (U. S. Letters Patent 1,824,695 were filed December 12, 1927 (R. 83-92). The respondent has leased at least some patented machines under restricted supplies clauses since 1931 (Issue date of U. S. Letters Patent 1,824,695) *ten years*, yet the respondent *has not* established a monopoly in salt tablets, and what is more, the *petitioner does not even claim that the respondent has effected one.*

The respondent leases *both patented and unpatented tablet depositing machines* under one or the other of two leases which are of record as Defendant's Exhibit 1 (R. 31, offered R. 15) and Defendant's Exhibit 2 (R. 34, offered R. 16). Each lease contains the condition that tablets *for use in the leased machine* shall be bought only from the lessor (R. 32, par. 1, and R. 36, Par. G, respectively). Otherwise, the leases differ, the lease comprising Defendant's Exhibit 2 not mentioning salt tablets or any patents owned by the respondent.

The District Court's findings of fact were *not* "adopted from findings common to those presented by both parties (R. 57-59) and respondent (R. 59-61)." It omitted important findings suggested by the respondent and accepted findings not submitted by the respondent.

Further, in regard to the point of no issue as to material facts, what the respondent suggested was (R. 61):

> "6. There is no genuine issue as to any material fact *involved in the matters submitted* under the Motion for Summary Judgment." (Emphasis supplied.)

Some additional important facts found by the Circuit Court of Appeals are conveniently overlooked by the petitioner. To use the words of Judge Evans (R. 129, 130):

> "In support of its contention that it was not substantially lessening competition or creating a monopoly in the salt business, plaintiff calls attention to the following facts:
>
> "(1) Plaintiff's machine is not the only machine used by the trade to deposit salt tablets of predetermined amount in the canning or other industries.
>
> "(2) Defendant makes a machine and uses it in the same way as plaintiff. It requires its purchaser or licensee to use salt tablets made by it.
>
> "(3) Plaintiff's lessees are permitted to purchase and use other machines. Its lessee may use, in connection with such other machines, any salt or salt tablets it desires. For the significance of this fact, see *Federal Trade Commission v. Sinclair Company*, 261 U. S. 463.
>
> "(4) The volume of all the salt business is large. The amount used in the canning field is so small that its complete control would not result in a monopoly of the salt industry. It is not the salt tablet as such but the salt which goes into the salt tablet which must determine the monopolistic tendency of plaintiff's lease contracts. For comparison see the amount of cracked gas to all gasoline used in the Standard Oil case, with the percentage of salt used in canning to all salt used for all purposes.
>
> "(5) Plaintiff stresses the fact that its machine may be used by its licensee for purposes other than depositing salt.
>
> "(6) Plaintiff's machines call for a $30 annual rental. The two hundred machines it has leased each cost $300 to build, from which fact it argues that the making of the machine for rental purposes—a 10% return—can not be called a sham or a coverage to monopolize the sale of an unpatented product, salt."

Hence, for each machine manufactured under the patent sued on rented under lease of the form of Defendant's Exhibit 1 or 2, a charge is made to the lessee of $30 per year (R. 19). A year to a canner of tomatoes, or the like, is from two to three months so that a machine is in actual service only a short period of time each year.

The respondent's general assistant to the manager stated on deposition that he estimated 200 machines constructed under the patent in suit are under lease to canner (R. 28, Qs. 44, 45). He did not testify as to how many canners were involved. As we asked the Seventh Circuit Court of Appeals, we ask this Court to take judicial notice of the fact that the National Canners Association of Washington, D. C., lists some *thirty-two hundred* canners in its 1940 Canners' Directory, a year book of 176 pages.

For reiteration, the petitioner is a direct infringer that has willfully copied the respondent's machine, well knowing all attendant circumstances. This is not a case of a plaintiff seeking assistance from the law to stop a competitor from competing with it in unpatented merchandise.

SUMMARY OF ARGUMENT.

The facts adduced by the petitioner before the District Court are insufficient to support the Motion for Summary Judgment, and such facts as are of record are contrary to the petitioner's theory of the case.

A contract between a lessor and a lessee whereby a depositing machine owned by the lessor is leased to the lessee for a stated yearly rental charge upon the condition that tablets (unpatented articles) deposited by the machine shall be purchased exclusively from the lessor is not automatically invalid because of the fact, *and for the fact alone*, that the lessor owns a patent under which the machine is constructed, and thereby a defense for an infringer of the patent. A contract of this nature is tested by the general law, especially Sec. 3 of the *Clayton Act*, and not by statutory or court law applicable directly to patents, and in the application of the test of Sec. 3 of the *Clayton Act* there must be a full and fair trial.

A contract restrictively leasing a machine operative with unpatented supplies, which is legal when the machine is unpatented, does not become illegal upon the issuance to the lessor of a patent on the machine solely by that fact, and thereby a shield to infringers of the patent.

The petitioner as a direct infringer has trespassed on the statutory monopoly granted to the respondent under its Letters Patent No. 2,060,645, and in suing the petitioner for infringement the respondent is not without sanction of law, for it is not thereby attempting to establish a monopoly in salt tablets, but is protecting its legal monopoly.

The respondent is suing the petitioner for direct infringement of its Letters Patent No. 2,060,645, and any monopolistic practice it may engage in above and beyond a specific use of the patent cannot serve as a defense to the charge of infringement.

ARGUMENT.

THERE IS NOT SUFFICIENT EVIDENCE OF RECORD UPON WHICH TO GRANT THE MOTION FOR SUMMARY JUDGMENT.

The Seventh Circuit Court of Appeals ruled that there is *not* sufficient evidence of record upon which to grant the motion for summary judgment out of which this issue grew. We emphasize the point for this Court's consideration.

All that the petitioner established is that the respondent leases patented depositing machines upon the condition that they be employed to deposit only salt tablets sold by the respondent, that the salt tablets are unpatented, although of a particular configuration, that any manufacturer can make the tablets, and that about 200 such machines are now leased.

There is no evidence as to the number of canners in the country, as to the number of canners that use depositors and the number that do not, as to the number of depositors used by a canner, as to the number of canners that purchase salt tablets from the respondent, the petitioner and others, as to depositors manufactured by other concerns than the respondent, and as to numerous other important matters.

Certainly, so far as the record shows, the petitioner, or third parties, may lease a multitude of noninfringing depositing machines, patented or unpatented, and may do the bulk of the salt tablet business through such machines.

We reiterate that all the record shows is that the respondent leases some patented depositing machines on the condition that only salt tablets sold by it be used thereby. The respondent's "monopoly" goes no further than a legal

use of its machines, its own property. How can this support the petitioner's motion granted on authority of the *American Lecithin Co.* case, 105 F. (2d) 207? The American Lecithin Company was guilty of a quite different practice as the Seventh Circuit Court of Appeals recognized, and ruled accordingly, and as this Court can readily see.

We submit, therefore, that the Seventh Circuit Court of Appeals should be affirmed on this ground of insufficient evidence.

THE RESPONDENT ENGAGES IN A PRACTICE THE LEGALITY OF WHICH IS TO BE ADJUDGED BY THE CLAYTON ACT, AND IT IS NOT ATTEMPTING TO EXTEND THE MONOPOLY OF ITS PATENT TO COVER UNPATENTED SALT TABLETS.

What is the Respondent's Accused Practice?

In order to reach a conclusion as to the legal status of the accused practice of the respondent, it is necessary to have in mind clearly *just what* that accused practice is.

The respondent manufactures and leases to canners, among other depositing machines, depositing machines constructed in accordance with the claimed teachings of its patent No. 2,060,645 upon which this suit is based. The machines are the property of the respondent. Each lease, be it of the nature of Defendant's Exhibits 1 or 2, includes the provision that the lessee shall use in the leased machine only tablets purchased from the respondent. One lease mentions patents and salt tablets; the other one does not. This, succinctly, is the accused practice of the respondent. The petitioner *does not contend* that the respondent by its practice has established a monopoly in unpatented salt tablets and there is surely not a scintilla of evidence of record to that effect.

Important attendant circumstances are that the respondent manufactures and leases under the accused restrictive clause depositing machines under patents other than that in suit and machines not covered by any patents at all. It leased machines under the restricted clause years before any patents were granted to it. It sells depositing machines manufactured under the patent for uses other than the depositing of salt tablets (R. 51, 52). In the accused leases of the respondent, there is no requirement which prohibits the lessee from leasing or purchasing another manufacturer's depositing machine, nor is the lessee forbidden to purchase salt tablets from another company for use in such depositing machines. Many canners have a plurality of canning lines on which different machines are used (R. 26, Qs. 27-31).

It is apparent, therefore, that the respondent practices the invention of its patent No. 2,060,645, since it manufactures depositing machines thereunder, that it retains title to such machines, and that it leases such machines by a written lease and under a specified yearly rental. It sells outright some machines.

Not by way of excuse, since we do not urge any, but as an agreed fact, the petitioner leases the infringing machines with a tag thereon prohibiting the use of the machines save for the deposit of salt tablets sold by the petitioner. Other concerns engaged in the same practice. The petitioner and those other firms engaging in this practice consider it legal, or surely they would not indulge in it.

Therefore, the case simmers down to a contention that the respondent is beyond the pale of the law because certain of its leased machines are constructed under patent rights; in other words, that if the respondent's machines were not patented, then its practice would be legal, providing no violation of the Clayton Act existed, a conclusion

unreasonably penalizing a patent owner and choking the spirit of invention. The position is utterly fallacious as the Seventh Circuit Court of Appeals readily saw, and as we shall conclusively demonstrate to this Court.

The Present Case Falls Into One of Two Categories.

The respondent is either

1. Using its patent in suit to create a monopoly in unpatented salt tablets in which its sole profits lie, or

2. Working its patent in suit by manufacturing depositing machines thereunder, retaining ownership thereof, and leasing them by individual contracts to canners for a price per year on the stipulation that only salt tablets purchased from the respondent be deposited by the machines, said leases including no prohibition against the lessors using others' machines and depositing others' tablets thereby.

This Court has condemned the first practice in *Carbice Corp. v. American Patents Development Corp.*, 283 U. S. 27, 75 L. ed. 819, and *Leitch Mfg. Co. v. Barber Company, Inc.*, 302 U. S. 458, 82 L. ed. 371. We do not concern ourselves with an analysis of this rule beyond stating here that this Court surely did not intend to stifle invention, and pointing out *infra* that we distinguish. The petitioner contends for the application of this rule.

The second practice is adjudged by Section 3 of the *Clayton Act* and the general law as this Court plainly stated in *Motion Picture Patents Co. v. Universal Film Mfg. Co.*, 243 U. S. 502, 61 L. ed. 871, and was sanctioned by this Court in *Federal Trade Commission v. Sinclair Refining Co.*, 261 U. S. 463, 67 L. ed., where, under the facts, no monopoly in a dispensed product resulted, and was condemned in *International Business Machine Corp. v. U. S.*, 298 U. S. 131, 80 L. ed. 1085, where, under the facts, a monopoly did result in a product used with the

leased machines. We submit that the respondent's practice is in this second classification, and, hence, that we are entitled to a full trial on the merits.

This Court's Position Relative to "Supplies Clauses" as Stated in Motion Picture Patents Co. v. Universal Film Mfg. Co., 243 U. S. 502, 61 L. ed. 371.

With the respondent's practice well in mind, we direct this Court's attention to its clear-cut words in *Motion Picture Patents Co. v. Universal Film Mfg. Co.*, 243 U. S. 502, 61 L. ed. 871, in regard to the restriction to specific supplies of patented machines *derived from a particular contract* between the patent owner and a lessee or purchaser. The case was the forerunner of the *Carbice* case, *supra*, in which it was cited with approval.

The *Motion Picture* case, *supra*, involved a consideration of the *sale* of a patented motion picture projector machine which carried a notice that it could be used only with a certain film manufactured by the patent owner. The machines were sold outright by a licensee of the patent owner. Machine owners using film not specified were sued.

Before condemning the practice of the patent owner in the *Motion Picture* case, *supra*, this Court said (pp 875-876):

> "The extent to which the use of the patented machine may validly be restricted to *specific supplies* or otherwise *by special contract* between the owner of a patent and the purchaser or licensee *is a question outside the patent law, and with it we are not here concerned* * * *." (Emphasis added.)

And (p. 877):

> "Whatever the right of the owner may be to control by restriction the materials to be used in operating the machine, it must be a right derived through the

> *general law from the ownership of the property in the machine,* and it cannot be derived from or protected by the patent law, which allows a grant only of the right to an exclusive use of the new and useful discovery which has been made—this and nothing more."

And even in pointing out the fallacy of the reasoning in the *Button-Fastener Co.* case, 77 F. 288, this Court said (p. 878):

> "This decision proceeds upon the argument that, since the patentee may withhold his patent altogether from public use, he must logically and necessarily be permitted to impose any conditions which he chooses upon any use which he may allow of it. The defect in this thinking springs from the substituting of inference and argument for the language of the statute, and *from failure to distinguish between the rights which are given to the inventor by the patent law and which he may assert against all the world through an infringement proceeding, and rights which he may create for himself by private contract, which, however, are subject to the rules of general, as distinguished from those of patent, law* * * *." (Emphasis added.)

Unequivocably, therefore, this Court's position at the time of the *Motion Picture* case, *supra*, as stated therein was that *whatever right a patent owner may have to restrict the use of a patented machine to unpatented supplies "must be a right derived through the general law from the ownership of the property in the machine."* We have no reason to believe it is not the same today. Accordingly, the rights must be *tested* by the general law which has crystallized into Section 3 of the *Clayton Act.*

As clearly, the rule of the *Carbice* and *Leitch* cases is *not* a limitation on the foregoing rule since these cases follow that part of the *Motion Picture* case, *supra*, which this Court deliberately separated from the foregoing rule.

We wish to point out here that it is manifest from the

foregoing rule that a contract between a patent owner and a licensee or lessee including a restrictive clause as to material or supplies used in a leased *patented* machine is *not* void merely because the machine is patented. That the leased machine is patented is merely another item of consideration. Paramount are the contract itself and its effect, and not the fact that the leased machine is patented. This is the point which the petitioner persists in overlooking, and which the Seventh Circuit Court of Appeals clearly perceived.

The Respondent Follows a Practice Sanctioned by the Ruling of This Court in Federal Trade Commission v. Sinclair Refining Co., 261 U. S. 463, 67 L. ed. 746.

The respondent follows a practice which this Court in *Federal Trade Commission v. Sinclair Refining Co.*, 261 U. S. 463, 67 L. ed. 746, sanctioned as legal and not in violation of Sec. 3 of the *Clayton Act.** The facts in that case and those here are on all-fours. That certain machines leased are patented is immaterial *either to condemn or to justify the respondent in its practice*, or to differentiate from the *Federal Trade Commission* case, *supra*. The Seventh Circuit Court of Appeals fully appreciated this last-mentioned important point when it stated (R. 127):

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*Clayton Act, Sect. 3:

"Sec. 3. That it shall be unlawful for any person engaged in commerce, in the course of such commerce, to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies, or other commodities, whether patented or unpatented, for use, consumption or resale within the United States or any territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, or fix a price charged therefor, or discount from, or rebate upon, such price, *on the condition, agreement or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies or other commodities of a competitor or competitors of the lessor or seller, where the effect of such lease, sale or contract for sale or such condition, agreement or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce.*" (Emphasis added.)

"A patent, in itself, is a monopoly—a legal monopoly. The limits of that monopoly are prescribed (and fixed) by the statute. They are to make, to sell, and to use the patented product or process for a period of seventeen years. The *patent grant* does not, however, extend to control of the making, selling, or the use of an unpatented article which may be the product of the patented process or product, or which may be necessarily used by the licensee of the patented machine or product.

"*On the other hand, a patentee is not handicapped in his commercial transactions because he owns a patent.* What he could lawfully do before he acquired the patent, he may lawfully do after acquirement. *Neither the Sherman Act, nor the Clayton Act, was intended to discriminate between patentees and others when it comes to use or sale of unpatented articles.*" (Emphasis supplied.)

Now, then, let us examine the *Federal Trade Commission* case, *supra*, and compare the facts there with the facts here.

The facts of the *Federal Trade Commission* case, *supra*, are, as here, quite simple, being condensed in the following words of this Court (page 749):

"In separate proceedings against thirty or more refiners and wholesalers, the Federal Trade Commission condemned and ordered them to abandon the practice of leasing underground tanks with pumps to retail dealers at nominal prices and upon condition that the equipment should be used only with gasoline supplied by the lessor * * *."

In other words, each of the refiners and wholesalers of gasoline leased its pump or pumps on the condition that only gasoline sold by them be dispensed through the pump or pumps. None of the leases specifically forbade the use of pumps of competitors or the sale of gasoline of others

in the pumps of competitors. The specific attacked clause of a typical lease which the Commission contended violated *Section 3* of the *Clayton Act* read (p. 751):

> "1. The above-described equipment shall be used by the party of the second part for the sole purpose of storing and handling the gasoline supplied by the party of the first part."

This Court, after considering the charges of the Commission in respect to the action of the refining companies and wholesalers, said in respect to the leases (p. 753):

> "Respondent's written contract *does not undertake to limit the lessee's right to use or deal in the goods of a competitor of the lessor, but leaves him free to follow his own judgment.* It is not properly described by the complaint, and is not within the letter of the Clayton Act. But counsel for the commission insist that inasmuch as lessees generally—except garage men in the larger places—will not encumber themselves with more than one equipment, the practical effect of the restrictive covenant is to confine most dealers to the products of their lessors; and we are asked to hold that, read in the light of these facts, the contract falls within the condemnation of the statute. Standard Fashion Co. v. Magrane-Houston Co., 258 U. S. 346, 66 L. ed. 653, 42 Sup. Ct. Rep. 360, and United Shoe Machinery Corp. v. United States, 258 U. S. 451, 66 L. ed. 708, 42 Sup. Ct. Rep. 363, are relied upon." (Emphasis added.)

This Court analyzed the two cases urged by the Commission in support of its contention that the clause in the lease was practically a restrictive covenant not to purchase the goods of a competitor, differentiated them, and stated (p. 753):

> "*There is no covenant in the present contract which obligates the lessee not to sell the goods of another; and its language cannot be so construed.* Neither the findings nor the evidence show circumstances similar

to those surrounding the 'tying' covenants of the Shoe Machinery Company. Many competitors seek to sell excellent brands of gasoline, and no one of them is essential to the retail business. The lessee is free to buy wherever he chooses; he may freely accept and use as many pumps as he wishes, and may discontinue any or all of them. *He may carry on business as his judgment dictates and his means permit, save only that he cannot use the lessor's equipment for dispensing another's brand.* By investing a comparatively small sum, he can buy an outfit and use it without hindrance. He can have respondent's gasoline, with the pump or without the pump, and many competitors seek to supply his needs. (Emphasis added.)

"The cases relied upon are not controlling."

This Court went on to point out that the Federal Trade Commission Act was not violated by the actions of the respondents, stating, among other things (p. 753):

"• • • The devices are not expensive—$300 to $500—can be purchased readily of makers, and, while convenient, *they are not essential* • • •." (Emphasis added.)

In concluding its opinion this Court said in respect to the powers of the Commission (p. 754):

"The powers of the commission are limited by the statutes. It has no general authority to compel competitors to a common level, to interfere with ordinary business methods, or to prescribe arbitrary standards for those engaged in the conflict for advantage called 'competition.' The great purpose of both statutes was to advance the public interest by securing fair opportunity for the play of the contending forces ordinarily engendered by an honest desire for gain. And to this end it is essential that those who adventure their time, skill and capital should have large freedom of action in the conduct of their own affairs."

Certainly the facts and circumstances of the present case

could not be closer to another set than to those in the *Federal Trade Commission* case, *supra.* In both cases dispensing machines were leased with the provision that only the product of the lessor be dispensed in the machines. In both cases the leases did *not* prohibit the lessees from securing a competitor's machine and from dispensing the competitor's product therein. In both cases the cost of the machines was small, there $300 to $500 and here $300 and less. In both cases the leased machines were nonessential. In both cases no actual monopoly was created, for there, other concerns' pumps could be and were leased, and here, other concerns' depositors can be and are leased. The petitioner has not proved and does not contend that the respondent has created a monopoly in salt tablets. Here, the depositors are patented, but the point is per se of no significance, for Section 3 of the Clayton Act attaches, when it does, not because the device is patented, *but in spite of the fact.* The *Motion Picture* case, *supra,* discussed above is clear in support of this point. The *Federal Trade Commission* case, *supra,* does not show whether the pumps were patented, but the likelihood is that they were at least in part. As we point out below in the consideration of the *International Business Machine Corp.* case, 298 U. S. 131, this Court *did not place as the basis of its decision there,* either, *that the machines were patented.*

Palpably, the respondent is following a practice sanctioned by this Court in the *Federal Trade Commission* case, and *should not be penalized because it owns a patent.* We show *infra* that the *patent sued on* below is *not* used in an attempt to monopolize salt tablets, the negative side of our position.

The Case of International Business Machine Corp. v. U. S., 298 U. S. 131, 80 L. ed. 1085.

This Court's decision in the case of *International Business Machine Corp. v. U. S.*, 298 U. S. 131, 80 L. ed. 1085, is of more than mere passing interest, for it supports our contentions in regard to the *Motion Picture* and *Federal Trade Commission* cases, *supra*.

The facts of the case show that the International Business Machine Corp. owned and leased certain machines for performing mechanical tabulations and computations. It and a co-operating competitor were the only two companies to manufacture such machines, which are very expensive. The Corporation leased the machines with the restriction that they be used only with tabulating cards purchased from the Corporation. In finding the practice of the Corporation to be a violation of the *Clayton Act* this Court, after quoting Sec. 3 thereof, said (p. 1088):

> "Little need be said of the contention that the condition of appellant's leases does not infringe these prohibitions. It is true that the condition is not in so many words against the use of the cards of a competitor, but is affirmative in form, that the lessee shall use only appellant's cards in the leased machines. But as the lessee can make no use of the cards except with the leased machines, and the specified use of appellant's cards precludes the use of the cards of any competitor, the condition operates in the manner forbidden by the statute. See United Shoe Machinery Corp. v. United States, 258 U. S. 451, 457, 458, 66 L. ed. 708, 717, 42 S. Ct. 363; compare Federal Trade Commission v. Sinclair Ref. Co., 261 U. S. 463, 474, 67 L. ed. 746, 753, 43 S. Ct. 450. A different question is presented from that in the Sinclair Ref. Co. case, where a wholesale distributor of gasoline leased gasoline pumps to retail dealers with the stipulation that they should not be used for the pumping of gasoline of the lessor's competitors. As the only use made of the

> gasoline was to sell it, and as there was no restraint upon the purchase and sale of competing gasoline, there was no violation of the Clayton Act."

It is important to note that this Court neither overruled nor modified the case of *Federal Trade Commission v. Sinclair Refining Co.*, 261 U. S. 463, 67 L. ed., but that it distinguished the same from the *International Business Machine Corp.* case. Each case stands on its own facts.

Also of importance here in the *International Business Machine Corp.* case are the following words of this Court (p. 1089):

> "But we do not place our decision on this narrow ground. We rest it rather on the language of § 3 of the Clayton Act, which expressly makes tying clauses unlawful, whether the machine leased is 'patented or unpatented.' The section does not purport to curtail the patent monopoly of the lessor or to restrict its protection by suit for infringement. But it does in terms deny to the lessor of a patented, as well as of an unpatented machine, the benefit of any condition or agreement that the lessee *shall not use the supplies of a competitor* * * *." (Emphasis added.)

Hence, again, we find this Court in positive expression to the effect that a *patent owner* is not to be penalized above and beyond one *not* owning a patent, for this Court here states in so many words that a restrictive agreement involving a patented machine is *not per se and without more* fatally defective and invalid, and that if a restrictive agreement involving a patented machine is invalid under Sec. 3 of the *Clayton Act*, it is invalid *not* because the machine forming the subject matter of the contract is *patented*, but *in spite of that fact!*

The Case of American Lecithin Co. v. The Warfield Co., 105 F. (2d) 207, Is Clearly Distinguishable And Is Not Controlling Here, As The Seventh Circuit Court Of Appeals Fully Appreciated.

The petitioner relies in the main on the case of *American Lecithin Co. v. Warfield Co.*, 105 F. (2d) 207, a decision of the Seventh Circuit Court of Appeals, to support its position that the respondent indulges in the practice of employing its patent in suit to create a monopoly in unpatented salt tablets in which the total profits of its business lie. The *Lecithin* case stems from the *Carbice* and *Leitch* decisions of this Court, although it goes further in applying the rule of those cases to direct infringement.

The petitioner's contention is that the Seventh Circuit Court of Appeals in its decision below overruled the *Lecithin* case. Even a casual reading of the opinion of the Seventh Circuit Court of Appeals (R. 124) suffices to clearly demonstrate that there is no truth in this contention, for, after setting forth the test enunciated in the *Lecithin* case (R. 126) and remarking upon Sec. 3 of the Clayton Act (R. 127), the Seventh Circuit Court of Appeals concluded that the facts shown were insufficient to determine whether or not a monopoly was being obtained by the respondent, and sent the case back for a trial upon the merits. The petitioner, in questions 1-3 (Petitioner's Brief, Page 6), takes meritless issue with the requirement of the Seventh Circuit Court of Appeals that a further factual showing be had.

Contrary to the petitioner's contention that the facts in the present case "are substantially on all fours with the material facts in the *Lecithin* case," the facts in the two cases are widely divergent. The only common factor is that both the Warfield Co. and the petitioner were sued as direct

infringers. The petitioner sweepingly states factual similarity, but it does not show any. The practice of the respondent is set forth at page 8, *supra*. Briefly, the facts of the *Lecithin* case follow:

The American Lecithin Co. owns the Working patent 1,781,672, which includes article and method claims involving lecithin as part of an article of manufacture and as used in the method of manufacturing chocolate or chocolate candy. The American Lecithin Company neither practiced the invention nor licensed chocolate manufacturers, but supplied unpatented lecithin to chocolate manufacturers, thereby obtaining its profits wholly through the sale of this unpatented lecithin. Anyone buying lecithin from the American Lecithin Company for the purpose of using it to make the patented chocolate, or to use it in the patented method of making chocolate, was entitled to practice the invention by implied license. The Warfield Co., a chocolate manufacturer, at first purchased lecithin from the American Lecithin Co., but later bought lecithin from competitors of the American Lecithin Co. Forthwith the American Lecithin Co. brought suit for infringement of its patent, an infringement which consisted of the purchase by the Warfield Co. of lecithin from the American Lecithin Co.'s competitors and the use of this lecithin in accordance with the method defined in the claims of the Working patent.

Since the respondent manufactures depositing machines under its patents sued on; since it retains the property right in its depositing machines; since it leases its owned machines to canners with the stipulation that the machines be used only with salt tablets purchased from the respondent, it is manifest that the factual structures are completely different.

In the *Lecithin* case the Seventh Circuit Court of Appeals

set out a yardstick by which to arrive at whether or not an accused practice extends beyond the patent monopoly granted under the statutes. The petitioner quotes the test on page 11 of its brief, and then proceeds to attempt to warp the practice of the respondent into channels to aline therewith. We submit that this attempt of the petitioner is but wishful thinking.

Adopting *arguendo* the rule as stated by the Seventh Circuit Court of Appeals, and using the words of the petitioner (Pet.'s Br. p. 11), the question is

> "* * * whether
>
> "(a) The respondent's activities in the manufacture and sale of salt tablets to the canning industry are beyond its *patent's* domain; whether
>
> "(b) *As a practical matter*, the exercise of the respondent's *patent monopoly* will result in a limited monopoly in an unpatented commodity, (salt tablets); and whether
>
> "(c) The respondent seeks to derive its *profits, not* from the *invention* itself, but from the unpatented supplies (salt tablets) used in the invention." (Emphasis added.)

The true answers clearly and unmistakably show the practice of the respondent to be outside the rule.

In respect to (a), the respondent manufactures depositing machines under its patent. It maintains its property rights in the manufactured machines. It leases its owned machines to canners by special and individual restrictive contracts. The canners' use of the machines with respondent's tablets is dependent upon the *leases*, and *not* upon the patent. Hence, no extramonopolistic use of the patent is employed. This Court in the *Motion Picture* Case, *supra*, clearly and in plain words states that such contracts are to be considered under the general law, which is now

crystallized in Sec. 3 of the Clayton Act, and not under the Patent Law. Hence, the respondent does not violate phase (a) of the test.

Considering (b), the respondent's activity is *not* an exercise of its patent monopoly. The respondent relies upon its leases in its transactions with the canners. Again we refer to the *Motion Picture case, supra,* and we point out that the words "as a practical manner" in this phase of the test are not to be overlooked; that, although the respondent has manufactured salt tablets since 1927 and has enjoyed patent rights on machines since 1931, no monopoly in salt tablets in the respondent exists, nor does the petitioner *even contend* that such monopoly exists. Certainly, a theoretical problematical gauge of monopoly should not be employed when a practical gauge of fourteen years experience exists and conclusively refutes the former. Any business monopoly achieved by respondent's leases is dependent upon the *leases,* and *not* upon the patent sued on, and the practice, if unlawful, should be declared so only after full proof and scrutiny under Sec. 3 of the *Clayton Act.* Manifestly, therefore, there is no violation of phase (b) of the rule.

Considering (c) of the rule, the respondent does derive a profit from salt tablets, but it charges $30.00 a year rental for each machine constructed under the patent, which is ample compensation for the use of the machine. Manifestly, the major profits derive from the salt tablets, but such is only a matter of degree and due to the sales factor of selling many more tablets than there are machines leased. The depositing machines are an aid to the business of selling salt tablets. There is no rule of law which requires that the income from each patent owned by a company must be the *main* source of income of the company, or suffer attaching of the rule of the *Carbice* and

Leitch cases. Manifestly, therefore, phase (c) of the rule is not violated.

It is clear that the facts of the present case take it from the rule of the *Lecithin* case. Certainly, if any one of the Circuit Courts of Appeals is fully cognizant of the *Lecithin* case, it is the Seventh Circuit Court of Appeals, which handed down the decision. However, the Seventh Circuit Court of Appeals is not so close to the forest that it fails to see the trees, and, therefore, it has found no violation of the rule of that case in the facts and circumstances of the present case.

We submit, therefore, that the rule of the *Lecithin* case does not apply here.

The Carbice and Leitch Cases.

The cases of *Carbice Corp. v. American Patents Development Corp.*, 283 U. S. 27, 75 L. ed. 819, and *Leitch Mfg. Co. v. Barber Company, Inc.*, 302 U. S. 458, 82 L. ed. 371, do not require analysis in view of the fact that we have conclusively distinguished the present case from the case of *American Lecithin Company v. The Warfield Co.*, 105 F. (2d) 207, which stems from the aforesaid two decisions of this Court.

In considering the *Motion Picture* case, *supra*, we point out that the *Carbice* and *Leitch* cases do not modify or limit the position of this Court in regard to contracts involving patented machines as expressed in the *Motion Picture* case, since that part of the *Motion Picture* case which formed the basis of the decision and which was divorced from the portion referring to contracts involving patents is quoted with approval and as precedent in the *Carbice* and *Leitch* cases. Inasmuch as the foregoing is clearly true, and since this Court is quite familiar with its *Carbice*

and *Leitch* decisions, it would be superfluous to also specifically and particularly distinguish the present case from the *Carbice* and *Leitch* cases.

Manifestly, the facts of the present case place it outside of the rule of the *Carbice* and *Leitch* cases.

Collateral Monopolistic Practices.

The petitioner alludes to a process patent of the respondent (Pet.'s Brief, p. 4). The Seventh Circuit Court of Appeals not only disregarded the patent in its opinion, but at the hearing took positive issue with the petitioner's counsel in respect to the point.

Without admitting either collateral or direct monopoly, we point out that the courts are uniform in the rule that collateral monopolistic practices of a plaintiff are not a defense to a suit for infringement.*

D. R. Wilder Mfg. Co. v. Corn Products Refining Co., 236 U. S. 165, 59 L. ed. 520;

United States Fire Escape Counterbalance Co. v. Joseph Halsted Co., 195 F. 295 (D. C., N. D. Ill., E. D.);

Harms et al. v. Cohen, 279 F. 276 (D. C., E. D. Pa.);

M. Witmark & Sons v. Pastime Amusement Co., 298 F. 470 (D. C., E. D. S. C.), Aff'd 2 F. (2d) 1020;

Radio Corporation of America et al. v. Duovac Radio Tube Corp., 6 F. Supp. 275 (D. C., E. D. N. Y.);

Radio Corporation of America et al. v. Majestic Distributors, Inc., 53 F. (2d) 641 (D. C., D. Conn.); *Radio Corporation of America et al. v. United Radio & Electric Corp. et al.*, 50 F. (2d) 206 (D. C., D. N. J.); *Radio Corporation of America v. Hygrade Sylvania Corp.*, 10 F. Supp. 879 (D. C., D. N. J.); *General Electric Co. v. Minneapolis Electric Lamp Co.*, 10 F. (2d) 851 (D. C., D. Minn., 4th Div.), Aff'd 7 F. (2d) 1020; *Western Electric Co., Inc., et al., v. Patent Reproducer Corp. et al.*, 53 F. (2d) 639 (D. C., S. D. N. Y.); *National Electric Products Corp. v. Circle Flexible Conduit Co., Inc.*, 57 F. (2d) 219 (D. C., E. D. N. Y.); *Vitagraph, Inc., et al., v. Grobaski et al.*, 46 F. (2d) 813 (D. C., W. D. Mich., N. D.); *Buck et al. v. Newsreel, Inc., et al.*, 25 F. Supp. 787 (D. C., D. Mass).

In the *United States Fire Escape* case, *supra*, the rule is expressed by the court (p. 298):

> "* * * The United States Steel Corporation, for instance, is the owner by assignment of hundreds of patents. In all its infringement suits may defendants raise the question now in litigation by the government whether it is or is not within the Sherman Act? The question would seem to suggest the answer, to the effect that an infringement suit may be disposed of without touching the question of trust or combination, and that the court, in adjudging infringement, would not thereby approve a possible illegal combination."

Manifestly, extensive quotations are unnecessary.

Warning of Infringers.

Then the petitioner complains because the Seventh Circuit Court of Appeals did not consider certain letters sent to the trade by the respondent (Pet.'s Br. p. 13). Not only are such letters immaterial to the question here, but also the courts are uniform in holding that a patent owner may warn infringers in good faith.*

American Ball Co. v. Federal Cartridge Corporation, 70 F. (2d) 579 (C. C. A. 8), 1934;
Adriance, Platt & Co. v. National Harrow Co., 121 F. 827 (C. C. A. 2), 1903;
A. B. Furquhar Co. v. National Harrow Co., 102 F. 714 (C. C. A. 3), 1900.

In the *Adriance, Platt & Co.* case, *supra*, the court said (pp. 829-30):

> "Undoubtedly the owner of a patent is acting within his rights in notifying infringers of his claims, and

Flynn & Emrich Co. v. Federal Trade Commission, 52 F. (2d) 836 (C. C. A. 4) 1931; *McIlhenny Co. v. Gaidry*, 253 F. 613 (C. C. A. 5), 1918; *Celite Corporation v. Dicalite Co.*, 96 F. (2d) 242 (C. C. A. 9), 1938; *International Silver Co. v. Oneida Community, Ltd.*, 27 T. M. Rep. 512 (D. C., N. D. N. Y.), 1937.

threatening them with litigation if they continue to disregard them; nor does he transcend his rights when, the infringer being a manufacturer, he sends such notices to the manufacturer's customers, if he does so in good faith, believing his claims to be valid, and in an honest effort to protect them from invasion. The question whether the patent owner is acting in good faith in advertising his claims to the manufacturer's customers by circulars or letters can seldom be determined from the contents of the communication alone, and, like all questions of intent, must generally be determined *by the extrinsic facts* * * *." (Emphasis supplied.)

The Practical Effect of The Petitioner's Contentions.

Before closing our brief we direct attention to the practical effect of the petitioner's contention when coupled with its own conduct.

The petitioner admittedly places on its infringing and noninfringing depositing machines a tag which prohibits the use of the machines by the lessee except for the deposit of salt tablets sold by the petitioner, a practice which it surely believes legal. The petitioner's depositing machines are not patented. Therefore, if the petitioner's contentions here are allowed and the decision of the lower court is reinstated, the petitioner may *continue* its aforesaid practice and can thus lease depositing machines which manifestly infringe the respondent's patent sued on, *and do it with impunity*, since the respondent will be adjudged guilty of monopolistic practice and beyond the pale of the law due to the fact that its machines, leased in *exactly* the same manner as those of the petitioner, *are patented!* The respondent will be penalized *because* it has had the ingenuity to develop and the foresight to patent its depositing machine. It will be penalized *solely* because it has thus developed and patented its machine, for it does not

violate Sec. 3 of the *Clayton Act*, the standard by which its practice should be adjudged.

Certainly, there is neither justice nor common sense in such a situation, and a decision creating such a situation is in conformity with neither the spirit nor the letter of Art. I, Sec. 8* of the constitution, upon which the patent statutes and laws are based, and is an unwarranted amendment to Sec. 3 of the *Clayton Act*.

The Petitioner's Brief.

Since the respondent's position is urged affirmatively, it is unnecessary to attack the brief of the petitioner topic by topic. We have demonstrated the fallacy of the petitioner's contention as to the respondent's practice, and all that the petitioner urges falls with its erroneous major premise.

Just one inaccuracy in the petitioner's brief do we wish to correct, namely, the statement on page 13, second paragraph, that "If the purchase of another machine is contemplated, respondent's lessee-licensee is confronted at once with a suit for infringement by his lessor-licensor." No suit for infringement would lie if a lessee of the respondent bought or leased a machine like the petitioner's can-operated machine, or like any one of numerous machines not falling under the patent sued on here. The point is elementary.

CONCLUSION.

For reiteration we repeat that the simple question here is, is a lease agreement valid under all of the laws of the land, automatically rendered invalid by the granting of a

*"The Congress shall have power * * * to promote the *progress* of science and useful arts, by securing for limited times to authors and inventors the *exclusive right to their* respective writings and *discoveries* (Art. I, sec. 8)." (Emphasis supplied.)

patent covering at least to a degree the subject matter leased under the agreement? Does it thereby become a shield for violation of valid patent rights? Specifically considering a particular case, namely, that of the respondent, are the leases of the respondent whereby it leases depositing machines to canners with the stipulation that salt tablets for depositing thereby be purchased only from the respondent invalid by the mere fact, without more, that the machine leased is patented, when such leases prior to the issuance of the patent were valid, and does such invalidity react to protect infringers of the patent?

We repeat that there is nothing in this Court's *Carbice* and *Leitch* decisions which can be construed as authority to effect such an unwarranted restriction on Sec. 3 of the *Clayton Act* and to deprive a patent owner of rights conferred by the Patent Office under the provisions of the patent statutes. Neither is there in the *Lecithin* case, and the Seventh Circuit Court of Appeals so held. There would be an anomalous situation indeed if a patent duly granted under the patent laws should render a previously valid agreement invalid merely by the issuance thereof. There is certainly no basis for thus turning a patent into an instrument of automatic destruction, for the Congress in passing the *Clayton Act* has by Sec. 3 provided ample protection for the rights of the public in regard to restrictive agreements, be the subject matter patented or unpatented.

Hence, we urge that this Court rule that the contention of the petitioner is unsound; that the mere fact that a restrictively leased machine is patented is not by such fact alone a complete defense in a patent infringement case; that a restrictive lease agreement must be tested by the yardstick of Sec. 3 of the *Clayton Act;* and that a restrictive

lease agreement is not a defense to a charge of infringement.

We respectfully submit that the decree of the Seventh Circuit Court of Appeals should be affirmed and that the respondent should be permitted to proceed with the trial of its case upon the merits.

Respectfully submitted,

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St. Louis, Missouri,
November 3, 1941.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1941.

MORTON SALT COMPANY,
Petitioner,
v.
THE G. S. SUPPIGER COMPANY,
Respondent.
No. 49.

PETITION FOR REHEARING.

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No. 49.

PETITION FOR REHEARING.

Now comes the respondent in this cause and respectfully requests that a rehearing be granted for the following reasons:

I.

This Court apparently summarily assumed that the respondent has been using its patent "as effective means of restraining competition with its sale of an unpatented article," which is the basis of the decision.

This Court says:

> "• • • The question we must decide is not necessarily whether respondent has violated the Clayton Act, but whether a court of equity will lend its aid to protect the patent monopoly when respondent is using it as the effective means of restraining competition with its sale of an unpatented article."

The Court then relates certain selected facts and states:

> "It thus appears that respondent is making use of its patent monopoly to restrain competition in the marketing of unpatented articles, salt tablets, for use with the patented machines, and is aiding in the creation of a limited monopoly in the tablets not within that granted by the patent. * * *."

The Court evidently has overlooked the fact that there is nothing in the Record which shows or suggests that the patent sued on was being used "as the effective means of restraining competition with its sale of an unpatented article," or "that respondent is making use of its patent monopoly to restrain competition in the marketing of unpatented articles." The petitioner does not even contend the existence of a monopoly in salt tablets on the part of the respondent.

Apparently the Court has failed to consider that the respondent leases its own property under written contracts; and that every business contract creates a business monopoly to the extent of the scope of the contract.

II.

By its decision, this Court has apparently established a rule of law which is contrary to the expressed will of Congress.

In its concluding remarks this Court says:

> "It is unnecessary to decide whether respondent has violated the Clayton Act, for we conclude that in any event the maintenance of the present suit to restrain petitioner's manufacture or sale of the alleged infringing machines is contrary to public policy and that the district court rightly dismissed the complaint for want of equity."

The only "public policy" to which this Court apparently

refers is that crystallized in the Clayton Act, particularly § 3. Hence, the decision actually holds that even if there is only a contended suggestion of a violation of the "public policy" crystallized by § 3 of the Clayton Act, then a patent owner cannot sue for infringement of its patent.

The Court has apparently failed to consider that Congress has specifically refused to pass legislation making proved violation of the Clayton Act a defense in a patent infringement case. The recent proposed Dill Bill which contained a provision making violation of the Clayton Act a defense in a patent infringement case as a major portion thereof was not passed by Congress. The rule announced by this Court goes farther than the Dill Bill, for a proved violation of the Clayton Act was required under the proposed Dill Bill.

III.

This Court apparently has failed to give consideration and expression to the controlling fact in the present case that the leased machines are the property of the respondent, whereas, in the Carbice case, the Leitch case, and all of the other cases involving the so-called unwarranted extension of a patent to unpatented products doctrine, no special property right of the patent owner was involved. Those practicing the processes of the patents in those cases, whether under implied or expressed licenses, did so on their own premises and with their own property.

In apparently overlooking the position defended by the respondent, this Court did not consider the controlling point of property ownership by the respondent in its depositing machines. This point was not present in, and by virtue of the nature of the patents could not be present in, the *Carbice,* etc., cases. Apparently the Court overlooked the important facts that the respondent does not

license others to make its machines upon the provision that such machines be used with salt tablet sold by the respondent; that the respondent manufactures the depositing machines itself, retains the property right in them, and leases the machines, one term of each lease being the use of the machines only with salt tablets sold by the respondent. In the *Carbice*, etc., cases, the only property right of the patent owner involved was the ownership of the respective patent for the processes of those patents where carried out on the premises and with the property of the users. Apparently, this Court has interpreted the respondent's actions as though it were licensing the manufacture and use of machines under its patent.

IV.

This Court has apparently failed to apply the rules of law heretofore established by it in the Motion Picture Patents Co. v. Universal Film Mfg. Co., 243 U. S. 502, 61 L. ed. 871.

In the *Motion Picture* case, *supra*, this Court said (pp. 875-876):

> "The extent to which the use of the patented machine may validly be restricted to *specific supplies* or otherwire *by special contract* between the owner of a patent and the purchaser or licensee *is a question outside the patent law, and with it we are not here concerned* * * *." (Emphasis added.)

And (p. 877):

> "Whatever the right of the owner may be to control by restriction the material to be used in operating the machine, it must be a right derived through the *general law from the ownership of the property in the machine*, and it cannot be derived from or protected by the patent law, which allows a grant only of the

right to an exclusive use of the new and useful discovery which has been made—this and nothing more."

Apparently, the Court has failed to consider that the respondent has entered into a "special contract" with each of its lessees, and that it has "a right derived through the general law from the ownership of the property in the machine" leased to each of its lessees, as it retains ownership of the machines.

V.

This Court has apparently failed to apply the rules of law heretofore established by it in Federal Trade Commission v. Sinclair Refining Co., 261 U. S. 463, 67 L. ed. 746, and International Business Machine Corp. v. U. S., 298 U. S. 131, 80 L. ed. 1085.

In respondent's brief, careful analysis is made of the *Federal Trade Commission* case, *supra*, pages 13-17, and of the *International Business Machine* case, *supra*, pages 18 and 19.

The Court apparently failed to consider the fact that the respondent follows the practice of the *Sinclair Refining Company* sanctioned by this Court, the only factual difference being the ownership by the respondent of a patent. The Court also apparently overlooked the rule of law in the *International Business Machine Corp.* case, *supra*, that the ownership of a patent does not ipso facto render the owner guilty of violation of the Clayton Act, and, by the same token of any "public policy," which the Clayton Act, particularly § 3, crystalizes.

VI.

The statement in the decision:

"Respondent argues that this doctrine is limited in its application to those cases where the patentee seeks

> **to restrain contributory infringement by the sale to licensees of a competing unpatented article, while here respondent seeks to restrain petitioner from a direct infringement, the manufacture and sale of the salt tablet depositor. • • •"**

is apparently a misapprehension of the Court, for the respondent made no distinction between contributory infringement and direct infringement.

In the United States Law Week for December 16, 1941, in the report of the argument there is found, page 3192:

> "Estill E. Ezell counsel for the patent owner stated that it is immaterial whether this is a case of direct or contributory infringement, since the question of monopoly arose under the general law, not the patent law."

CONCLUSION.

We respectfully request, therefore, that in view of the foregoing, a rehearing be granted the respondent.

Respectfully submitted,

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St. Louis, Missouri,
January 27, 1942.

Certificate.

Estill E. Ezell, attorney of record for the respondent in the above-entitled suit, hereby certifies that in his opinion the foregoing petition for rehearing is well founded in law and in fact and that it is presented in good faith and not for the purpose of delay.

Estill E. Ezell,
Attorney for Respondent.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1941.

No. 49

MORTON SALT COMPANY,
a Corporation of Illinois,
Petitioner,

vs.

THE G. S. SUPPIGER COMPANY,
a Corporation of Delaware,
Respondent.

BRIEF FOR PETITIONER IN REPLY TO RESPONDENT'S PETITION FOR REHEARING.

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IN THE

Supreme Court of the United States

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BRIEF FOR PETITIONER IN REPLY TO RESPONDENT'S PETITION FOR REHEARING.

As an attorney for the respondent has certified "that in his opinion" the petition for rehearing "is well founded in law and in fact", it appears incumbent for us to reply.

From the petition for rehearing it appears obvious that respondent has failed to grasp the reasoning of the

Court and the basis of its decree. The several points urged for re-argument were all made and argued at length both in respondent's brief and in the hearing before the Court. Each is met and determined by the Court in its decision. And to grant the rehearing would merely permit respondent to re-argue the case upon the same lines that were followed at the hearing.

Point II, page 3 of the petition for rehearing, deserves comment as being unique. It asserts that this Court has "established a rule of law which is contrary to the expressed will of Congress"; that it has "failed to consider that Congress has specifically refused to pass legislation making proved violation of the Clayton Act a defense in a patent infringement case."

We have heard of this Court examining the proceedings and discussions of members of the Congress in determining the intent of a statute which has been passed. But we know of no instance in which the failure of Congress to enact a statute has been accepted as authority for a rule that the law must be the precise opposite of that set forth in the rejected legislation. Maybe Congress thought the proposed legislation unnecessary in view of the existing law as interpreted by this Court in the various cases referred to in its opinion.

Respondent's petition for rehearing should be denied.

Respectfully submitted,

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January 29, 1942.

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P 1.

SUPREME COURT OF THE UNITED STATES.

No. 49.—October Term, 1941.

Morton Salt Company, Petitioner, *vs.* The G. S. Suppiger Company. | On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[January 5, 1942.]

Mr. Chief Justice Stone delivered the opinion of the Court.

Respondent brought this suit in the district court for an injunction and an accounting for infringement of its Patent No. 2,060,645, of November 10, 1936, on a machine for depositing salt tablets, a device said to be useful in the canning industry for adding predetermined amounts of salt in tablet form to the contents of the cans.

Upon petitioner's motion, pursuant to Rule 56 of the Rules of Civil Procedure, the trial court, without passing on the issues of validity and infringement, granted summary judgment dismissing the complaint. It took the ground that respondent was making use of the patent to restrain the sale of salt tablets in competition with its own sale of unpatented tablets, by requiring licensees to use with the patented machines only tablets sold by respondent. The Court of Appeals for the Seventh Circuit reversed, 117 F. 2d 968, because it thought that respondent's use of the patent was not shown to violate § 3 of the Clayton Act, 15 U. S. C. § 14, as it did not appear that the use of its patent substantially lessened competition or tended to create a monopoly in salt tablets. We granted certiorari, 313 U. S. 555, because of the public importance of the question presented and of an alleged conflict of the decision below with *B. B. Chemical Co.* v. *Ellis*, 117 F. 2d 829, and with the principles underlying the decisions in *Carbice Corp.* v. *American Patents Corp.*, 283 U. S. 27 and *Leitch Mfg. Co.* v. *Barber Co.*, 302 U. S. 458.

The Clayton Act ~~imposes criminal penalties for engaging in specified unlawful trade practices tending to monopoly and restraint of trade, and authorizes those injured by violations~~ authorizes those injured by violations tending to monoply to main-

tain suit for treble damages and for an injunction in appropriate cases. 15 U. S. C. §§ 1, 2, 14, 15, 26. But the present suit is for infringement of a patent. The question we must decide is not necessarily whether respondent has violated the Clayton Act, but whether a court of equity will lend its aid to protect the patent monopoly when respondent is using it as the effective means of restraining competition with its sale of an unpatented article.

Both respondent's wholly owned subsidiary and the petitioner manufacture and sell salt tablets used and useful in the canning trade. The tablets have a particular configuration rendering them capable of convenient use in respondent's patented machines. Petitioner makes and leases to canners unpatented salt depositing machines, charged to infringe respondent's patent. For reasons we indicate later, nothing turns on the fact that petitioner also competes with respondent in the sale of the tablets, and we may assume for purposes of this case that petitioner is doing no more than making and leasing the alleged infringing machines. The principal business of respondent's subsidiary, from which its profits are derived, is the sale of salt tablets. In connection with this business, and as an adjunct to it, respondent leases its patented machines to commercial canners, some two hundred in all, under licenses to use the machines upon condition and with the agreement of the licensees that only the subsidiary's salt tablets be used with the leased machines.

It thus appears that respondent is making use of its patent monopoly to restrain competition in the marketing of unpatented articles, salt tablets, for use with the patented machines, and is aiding in the creation of a limited monopoly in the tablets not within that granted by the patent. A patent operates to create and grant to the patentee an exclusive right to make, use and vend the particular device described and claimed in the patent. But a patent affords no immunity for a monopoly not within the grant, *Interstate Circuit* v. *United States*, 306 U. S. 208, 228, 230; *Ethyl Gasoline Corp.* v. *United States*, 309 U. S. 436, 456, and the use of it to suppress competition in the sale of an unpatented article may deprive the patentee of the aid of a court of equity to restrain an alleged infringement by one who is a competitor. It is the established rule that a patentee who has granted a license on condition that the patented invention be used by the licensee only with unpatented materials furnished by the licensor, may not restrain as a contributory infringer one

who sells to the licensee like materials for like use *Motion Picture Patents Co.* v. *Universal Film Mfg. Co.*, 243 U. S. 502, 510; *Carbice Corp* v. *American Patents Corp.*, *supra*; *Leitch Mfg. Co.* v. *Barber Co.*, *supra*; cf. *United Shoe Machinery Co.* v. *United States*, 258 U. S. 451, 462; *International Business Machines Corp.* v. *United States*, 298 U. S. 131, 140.

The grant to the inventor of the special privilege of a patent monopoly carries out a public policy adopted by the Constitution and laws of the United States, "to promote the Progress of Science and useful Arts, by securing for limited Times to . . . Inventors the exclusive Right . . . " to their "new and useful" inventions. United States Constitution, Art. I, § 8, cl. 8; 35 U. S. C. § 31. But the public policy which includes inventions within the granted monopoly excludes from it all that is not embraced in the invention. It equally forbids the use of the patent to secure an exclusive right or limited monopoly not granted by the Patent Office and which it is contrary to public policy to grant.

It is a principle of general application that courts, and especially courts of equity, may appropriately withhold their aid where the plaintiff is using the right asserted contrary to the public interest. *Virginia Ry.* v. *Federation*, 300 U. S. 515, 552; *Central Kentucky Co.* v. *Commission*, 290 U. S. 264, 270-73; *Harrisonville* v. *Dickey Clay Co.*, 289 U. S. 334, 337-38; *Beasley* v. *Texas & Pacific Railway Co.*, 191 U. S. 492, 497; *Securities Comm'n* v. *U. S. Realty Co.*, 310 U. S. 434, 455; *United States* v. *Morgan*, 307 U. S. 183, 194. Respondent argues that this doctrine is limited in its application to those cases where the patentee seeks to restrain contributory infringement by the sale to licensees of a competing unpatented article, while here respondent seeks to restrain petitioner from a direct infringement, the manufacture and sale of the salt tablet depositor. It is said that the equitable maxim that a party seeking the aid of a court of equity must come into court with clean hands applies only to the plaintiff's wrongful conduct in the particular act or transaction which raises the equity, enforcement of which is sought; that where, as here, the patentee seeks to restrain the manufacture or use of the patented device, his conduct in using the patent to restrict competition in the sale of salt tablets does not foreclose him from seeking relief limited to an injunction against the manufacture and sale of the infringing machine alone.

Undoubtedly "equity does not demand that its suitors shall have led blameless lives", *Loughran* v. *Loughran*, 292 U. S. 216, 229; cf. *Keystone Co.* v. *Excavator Co.*, 290 U. S. 240, 241-45, but additional considerations must be taken into account where maintenance of the suit concerns the public interest as well as the private interests of suitors. Where the patent is used as a means of restraining competition with the patentee's sale of an unpatented product, the successful prosecution of an infringement suit even against one who is not a competitor in such sale is a powerful aid to the maintenance of the attempted monopoly of the unpatented article, and is thus a contributing factor in thwarting the public policy underlying the grant of the patent. Maintenance and enlargement of the attempted monopoly of the unpatented article are dependent to some extent upon persuading the public of the validity of the patent, which the infringement suit is intended to establish. Equity may rightly withhold its assistance from such a use of the patent by declining to entertain a suit for infringement, and should do so at least until it is made to appear that the improper practice has been abandoned and that the consequences of the misuse of the patent have been dissipated. Cf. *B. B. Chemical Co.* v. *Ellis*, decided this day.

The reasons for barring the prosecution of such a suit against one who is not a competitor with the patentee in the sale of the unpatented product are fundamentally the same as those which preclude an infringement suit against a licensee who has violated a condition of the license by using with the licensed machine a competing unpatented article, *Motion Picture Patents Co.* v. *Universal Film Mfg. Co.*, *supra*, or against a vendee of a patented or copyrighted article for violation of a condition for the maintenance of resale prices, *Adams* v. *Burke*, 17 Wall. 453; *Bobbs-Merrill Co.* v. *Straus*, 210 U. S. 339; *Bauer & Cie* v. *O'Donnell*, 229 U. S. 1; *Straus* v. *Victor Talking Machine Co.*, 243 U. S. 490; *Boston Store* v. *American Gramophone Co.*, 246 U. S. 8; cf. *United States* v. *Gen. Elec. Co.*, 272 U. S. 476, 485. It is the adverse effect upon the public interest of a successful infringement suit in conjunction with the patentee's course of conduct which disqualifies him to maintain the suit, regardless of whether the particular defendant has suffered from the misuse of the patent. Similarly equity will deny relief for infringement of a trademark where the plaintiff is misrepresenting to the public the nature of his product either by the trademark itself or by his label. *Manhattan Medicine*

Co. v. *Wood*, 108 U. S. 218; *Worden* v. *California Fig Syrup Co.*, 187 U. S. 516; *Leather Cloth Co.* v. *American Leather Cloth Co.*, 11 H. L. 522, 541-45; see also, for application of the like doctrine in the case of copyright, *Edward Thompson Co.* v. *American Law Book Co.*, 122 F. 922, 926; *Stone & M'Carrick* v. *Dugan Piano Co.*, 220 F. 837, 841-43. The patentee, like these other holders of an exclusive privilege granted in the furtherance of a public policy, may not claim protection of his grant by the courts where it is being used to subvert that policy.

It is unnecessary to decide whether respondent has violated the Clayton Act, for we conclude that in any event the maintenance of the present suit to restrain petitioner's manufacture or sale of the alleged infringing machines is contrary to public policy and that the district court rightly dismissed the complaint for want of equity.

Reversed.

Mr. Justice ROBERTS took no part in the decision of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.